MISSISSIPPI CODE 1972

Annotated

Public Lands, Buildings and Property
Public Business, Bonds and Obligations
Military Affairs

Titles 29 to 33

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME NINE

Public Lands, Buildings and Property

Public Business, Bonds and Obligations

Military Affairs

§§ 29-1-1 to 33-15-513

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2020 REGULAR
LEGISLATIVE SESSION

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ISBN 978-1-5221-9390-6 (Volume 9)
ISBN 0-327-09628-4 (Code set)

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Matthew Bender & Company, Inc.

555 Middle Creek Parkway, Colorado Springs, CO 80921

www.lexisnexis.com

(Pub. 44510)

PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

PUBLISHER'S FOREWORD

This 2020 Replacement Volume 9 of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 2000 Replacement Volume 9, the 2005 Replacement Volume 9, the 2008 Replacement Volume 9 and the 2010 Replacement Volume 9, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2020 Regular Legislative Session.

This volume contains the text of Titles 29 through 33, of the Mississippi Code of 1972 Annotated, as amended through the 2020 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals decisions and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PUBLISHER'S FOREWORD

A comprehensive Index appears at the end of this volume.

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For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 555 Middle Creek Parkway, Colorado Springs, CO 80921.

December 2020 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
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— Joint Legislative Committee Notes
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— Replacement Volumes
— Research and Practice References
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 555 Middle Creek Parkway, Colorado Springs, CO 80921.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are retained online indefinitely.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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§ 29-1-1. Purchase of land by state; title to land acquired with state funds as under name of state; sale of public lands; gift or donation of land to state; Secretary of State to sign conveyances; inventory of state lands; land purchased for benefit of state agency; use of assets of Public Employees' Retirement System restricted; cultural resources survey; land acquired for highways, through federal funds or for the Mississippi Major Economic Impact Authority projects exempt; recovery of expenses for record-keeping; requirements for certain legislatively authorized conveyances of specifically described real property.

(1) Except as otherwise provided in subsections (7), (8), (9) and (13) of this section, the title to all lands held by any agency of the State of Mississippi shall appear on all deeds and land records under the name of the "State of Mississippi." A deed may also recite the name of the agency for whose benefit and use the land is acquired, but the recital shall not be deemed or construed to be a limitation on the grant or an impairment of title held by the State of Mississippi. Use and possession of the land may be reassigned by act of the Legislature or by interagency conveyance where each agency has statutory authority to acquire and dispose of land. For the purpose of this section, the term "agency" shall be defined as set forth in Section 31-7-1(a). The provisions of this section shall not affect the authority of any agency to use any land held by the agency. No assets or property of the Public Employees' Retirement

System of Mississippi shall be transferred in violation of Section 272A of the Mississippi Constitution of 1890. Each state agency shall inventory any state-held lands which are titled in the name of the agency. The agency shall execute quitclaim deeds and any other necessary documents to transfer the name and title of the property to the State of Mississippi. State agencies shall furnish to the Secretary of State certified copies of the quitclaim deeds and all other deeds whereby the state agency acquires or disposes of state-held land.

(2) The Secretary of State, under the general direction of the Governor and as authorized by law, shall sell and convey the public lands in the manner and on the terms provided herein for the several classes thereof; he shall perform all the administrative and executive duties appertaining to the selection, location, surveying, platting, listing, and registering these lands or otherwise concerning them; and he shall investigate the status of the various "percent" funds accrued and accruing to the state from the sale of lands by the United States, and shall collect and pay the funds into the Treasury in the manner provided by law. The Secretary of State, with the approval of the Governor, acting on behalf of the state, may accept gifts or donations of land to the State of Mississippi.

(3) In accordance with Sections 7-11-11 and 7-11-13, the Secretary of State shall be required to sign all conveyances of all state-held land. For purposes of this section, the term "conveyance" shall mean any sale or purchase of land by the State of Mississippi for use by any agency, board or commission thereof. Failure to obtain legislative approval pursuant to subsection (4) of this section and the signature of the Secretary of State on any conveyance regarding the sale or purchase of lands for the state including any agency, board or commission thereof, shall render the attempted sale or purchase of the lands void. Nothing in this section shall be construed to authorize any state agency, board, commission or public official to convey any state-held land unless this authority is otherwise granted by law. The Secretary of State shall not withhold arbitrarily his signature from any purchase or sale authorized by the Mississippi State Legislature. Except for those lands forfeited to the state for the nonpayment of taxes, conveyed to another state agency or entity as provided in subsection (11) of this section or acquired by the Mississippi Transportation Commission under Section 65-1-123, no state-held land shall be sold for less than the fair market value as determined by two (2) professional appraisers selected by the State Department of Finance and Administration, who are certified general appraisers of the State of Mississippi. The proceeds from any sale by an agency, board, commission or public official of state-held lands shall be deposited into the State General Fund unless otherwise provided by law.

(4) Before any state-held land is sold to any individual or private entity, thirty (30) days' advance notice of the intended sale shall be provided by the Secretary of State to the State Legislature and to all state agencies for the purpose of ascertaining whether an agency has a need for the land and for the purpose of ascertaining whether the sale of the land was authorized by law. If no agency of the state expresses in writing to the Secretary of State by the end

of the thirty-day period a desire to use the land, then the Secretary of State, with the prior approval of the Mississippi Legislature to sell the state-held land, may offer the land for sale to any individual or private entity. Such notice to state agencies is given in aid of internal management of the real property inventory of the state, and this notice requirement shall not be applied to challenge or defeat any title heretofore or hereafter granted by the state under any law authorized by the Mississippi Legislature providing for the sale or disposal of property.

(5) A cultural resources survey may be performed on any state-held land before the disposition of the land if the Mississippi Department of Archives and History deems this survey necessary. The cost of the survey and any archaeological studies deemed necessary by the Mississippi Department of Archives and History shall be paid by the selling agency and recouped from the proceeds of the sale.

(6) Before any land may be purchased by the state for the benefit of any state agency, the Secretary of State, or his designee, shall search and examine all state land records to determine whether the state owns any land that may fit the particular need of the agency. The Secretary of State, or his designee, shall notify the agency if it is determined that any state-held land is available for use by the agency. The agency shall determine if such land accommodates its needs and shall determine whether to make an official request to the proper authorities to have the use of the land.

(7) This section shall not apply to: (a) any lands purchased or acquired for construction and maintenance of highways or highway rights-of-way by the Mississippi Department of Transportation, or (b) any lands acquired by the state by forfeiture for nonpayment of ad valorem taxes and heretofore or hereafter sold under authority of any other section of Chapter 1, Title 29, specifically relating to tax-forfeited lands.

(8) This section shall not apply to any lands purchased solely by the use of federal funds or lands for which authority to transfer or dispose of these lands is governed by federal law or federal regulations insofar as the application of this section limits or impairs the ability of the Secretary of State to acquire or dispose of the land. However, any state agency acquiring or disposing of land exempted from the application of this section by this subsection shall furnish the Secretary of State certified copies of all deeds executed for those transfers or disposals.

(9) Any lands purchased by the Mississippi Major Economic Impact Authority for a "project" as defined in Section 57-75-5 shall be excluded from the provisions of this section.

(10) The Secretary of State may recover from any agency, corporation, board, commission, entity or individual any cost that is incurred by his office for the record-keeping responsibilities regarding the sale or purchase of any state-held lands.

(11) Subsections (4), (5) and (6) of this section shall not apply to sales or purchases of land when the Legislature expressly authorizes or directs a state agency to sell, purchase or lease-purchase a specifically described property.

However, when the Legislature authorizes a state agency to sell or otherwise convey specifically described real property to another state agency or other entity such as a county, municipality, economic development district created under Section 19-5-99 or similar entity, without providing that the conveyance may not be made for less than the fair market value of the property, then the state agency authorized to convey such property must make the following determinations before conveying the property:

(a) That the state agency or other entity to which the proposed conveyance is to be made has an immediate need for the property;

(b) That there are quantifiable benefits that will inure to the state agency or other entity to which the proposed conveyance is to be made which outweigh any quantifiable costs to the state agency authorized to make the conveyance; and

(c) That the state agency or other entity to which the proposed conveyance is to be made lacks available funds to pay fair market value for the property. If the state agency authorized to convey such property fails to make such determinations, then it shall not convey the property for less than the fair market value of the property.

(12) This section shall not apply to the donation and conveyance of the Nanih Waiya State Park to the Mississippi Band of Choctaw Indians.

(13) This section shall not apply to any lands acquired, sold, or leased pursuant to Section 59-5-1 et seq.

HISTORY: Codes, 1892, § 2568; 1906, § 2906; Hemingway's 1917, § 5241; 1930, § 6012; 1942, § 4094; Laws, 1993, ch. 615, § 1; Laws, 1995, ch. 516, § 4; Laws, 2002, ch. 445, § 1; Laws, 2003, ch. 513, § 1; Laws, 2007, ch. 310, § 3; Laws, 2009, ch. 459, § 1; Laws, 2010, ch. 416, § 1; Laws, 2016, 1st Ex Sess, ch. 1, § 14, eff from and after passage (approved Feb. 8, 2016).

Editor's Notes — Laws of 2007, ch. 310, §§ 1 and 2 provides:

"SECTION 1. The Legislature finds that in 2004 several state parks were requiring substantial subsidies from the General Fund, and the Mississippi Commission on Wildlife, Fisheries and Parks was directed to promptly dispose of those parks through closure, lease, sale or transfer. The Nanih Waiya State Park was one of those state parks to be promptly disposed of by the commission. Nanih Waiya is the site of a sacred mound of the Choctaw Nation and on lands ceded to the United States by the Choctaw Nation under the Treaty of Dancing Rabbit Creek. The Nanih Waiya Mound is venerated by the Choctaws and the site is considered to be the birthplace of the Choctaws. The Mississippi Band of Choctaw Indians desires to have this site of great historical significance to the Choctaws returned to them. The Legislature finds that it is in the public interest to return this historical site of the Choctaw Indians to the Mississippi Band of Choctaw Indians.

"SECTION 2. The Commission on Wildlife, Fisheries and Parks and the Department of Wildlife, Fisheries and Parks shall take any and all actions necessary to donate and to convey the Nanih Waiya State Park to the Mississippi Band of Choctaw Indians. The executive director of the department is authorized to execute any document or instrument to accomplish the donation and conveyance of the park."

Laws of 2011, ch. 381, § 1, provides:

"SECTION 1. (1) The Secretary of State is hereby authorized in his discretion to convey and transfer to the United States of America for the use and occupancy of the United States Coast Guard the following buildings and improvements constructed on

Singing River Island and formerly owned and used by the United States of America for Naval Station Pascagoula: (a) Building 100 (Hazardous Waste Warehouse consisting of 2,162 square feet, more or less), (b) Building 102 (Hazardous Waste Office consisting of 82.5 square feet, more of less), and (c) Building 110 (Port Operation Facility consisting of 4,392 square feet, more or less), together with all concrete pads and fences associated with or used in connection with said buildings.

"(2) Such buildings and improvements may be donated or conveyed to the United States of America for the use and occupancy of the United States Coast Guard for any consideration and upon such other terms and conditions as the Secretary of State may deem advisable.

"(3) The Secretary of State is authorized to convey and transfer title to said buildings and improvements only. Any such conveyance shall provide that title to said buildings and improvements shall revert to the State of Mississippi in the event the United States Coast Guard fails to maintain a lease of the land on which said buildings are situated or in the event the United States Coast Guard terminates operations on Singing River Island."

Laws of 2015, ch. 356, §§ 1 and 2, provide:

"SECTION 1. (1) The Department of Wildlife, Fisheries and Parks, is hereby authorized to sell, lease, or exchange for a tract or tracts of equal value, a certain parcel of real property with improvements, located in Claiborne County, Mississippi, being part of the Canemount Wildlife Management Area, containing the historic home and outbuildings, provided that the sale and conveyance is subject to the requirements of Section 29-1-1. The authority set forth herein shall include the right to advertise for sale or lease to the highest and best bidder. The tract of land and any improvements located thereon, which is authorized to be sold is more particularly described as follows:

"Point of Commencement (POC) being the SE corner of irregularly shaped section 48, Township 11 North, Range 1 East, located at MS West NAD 83 FT coordinates 869193.392, 2052684.338; from(POC) travel N 79° 43' 13" W for 3107.634 feet to a point; thence N 14° 23' 37" E for 1117.215 feet to the Point of Beginning (POB); thence N 0° 56' 45" W for 788.031 feet to a point; thence along a curve following MS 552 to the right with a chord bearing and distance of N 8° 4' 49" E, for 688.916 feet, said curve radius being 2200 feet, to a point; thence S 90° E for 1106.426 feet to a point; thence S 0° E for 1470 feet to a point; thence S 90° W for 1190.263 feet to the POB.

"(2) All monies derived from the sale of the property described in subsection (1) of this section shall be deposited into the Fisheries and Wildlife Fund of the State Treasury and shall not be deposited into the State General Fund.

"SECTION 2. Any advertisements or notices required to effect the sale, lease, or exchange of this property, shall include information stating that the dwelling house located on the property is listed on the National Register of Historic Places, and subject to any and all rules and regulations appertaining thereto."

Laws of 2018, ch. 355, § 1, effective March 15, 2018, provides:

"SECTION 1. (1) The Secretary of State is hereby authorized to transfer and reconvey by means of donation to the National Park Service certain submerged lands located in Davis Bayou situated in Section 33, Township 7 South, Range 8 West, Mississippi Sound, Jackson County, State of Mississippi, and being more particularly described as follows:

"[For complete description of property, see Section 1, ch. 355, Laws of 2018].

"(2) The State of Mississippi shall retain all mineral rights to the real property sold or leased under this section.

"(3) The Secretary of State is further authorized to execute, with the approval of the Governor, any agreements, deed and other documents necessary to complete the property donation authorized under subsection (1) of this section. The Secretary of State may correct any discrepancies in the legal description of the property provided in this section."

Cross References — Special provisions regarding sale of lands acquired by county or regional railroad authorities, see § 19-29-21.

Mississippi Major Economic Impact Authority generally, see § 57-75-1 et seq.

Disposal of airport property, see § 61-3-19.

JUDICIAL DECISIONS

1. Advance notice.

University fell under the ambit of Miss. Code Ann. § 29-1-1(4) because it was a state agency; therefore, the Secretary of State should have provided the university with a thirty-day advance notice of the sale, and because the record contained no evidence of a thirty-day advance notice, the sale of the forfeited land tax patent was void and did not vest title in the property owner. Smith v. Jackson State Univ., 995 So. 2d 88, 2008 Miss. LEXIS 454 (Miss. 2008).

OPINIONS OF THE ATTORNEY GENERAL

The Forestry Commission is authorized, though not required, by House Bill 726 to convey certain property to Issaquena County for the sum of $10,000.00 in accord with the terms and conditions set forth in said Act, notwithstanding that the property had been appraised for $90,000. Sledge, July 24, 1998, A.G. Op. #98-0420.

This section applies to sales of University of Mississippi property. Khayat, April 16, 1999, A.G. Op. #99-0163.

The sale of University of Mississippi land authorized by H.B. 1041 (Chapter 304, Miss. Laws, 1998) is exempt from the requirements relating to all sales of state-held lands supplied by subsection (3) of this section; however, fair market value must be obtained for these lands in the absence of a legislatively authorized donation pursuant to Section 66 of the Constitution of 1890; further, although the University of Mississippi is not required to utilize appraisers, it may do so in order to determine fair market value. Khayat, April 16, 1999, A.G. Op. #99-0163.

The Mississippi Employment Security Commission falls under the exemption found in paragraph 8 so as to exempt it from complying with the statute with regard to lands purchased solely with federal funds. Thompson, Sept. 14, 2001, A.G. Op. #01-0534.

Property which consisted of a building purchased solely with federal funds on land that was deeded to a state agency by the state did not fall under the exemption of paragraph 8. Thompson, Sept. 14, 2001, A.G. Op. #01-0534.

The Tombigbee River Valley Water Management District may acquire property by first contacting the Secretary of State in accordance with Section 29-1-1(6); if no suitable state-held land is available, then the District may identify suitable property and begin negotiations in compliance with Section 43-37-3. Applewhite, Jan. 10, 2003, A.G. Op. #02-0765.

If the Mississippi Department of Wildlife, Fisheries and Parks conveys Nanih Wayia State Park to the Mississippi Band of Choctaw Indians it must secure the fair market value of the park in accordance with the procedures outlined in the latter part of § 55-3-47(3). Posey, Aug. 13, 2004, A.G. Op. 04-0362.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 1 et seq.

15A Am. Jur. Legal Forms 2d, Public Lands §§ 212:9 et seq. (sale, lease, and license of public lands).

§ 29-1-3. Sixteenth section or in lieu lands; report of Secretary of State; public officials to supply management and investment information.

(1) The Secretary of State has a supervisory power over sixteenth section lands or lands granted in lieu thereof; and he shall supply to the members of the Legislature, the boards of supervisors, the boards of education and other interested persons information concerning those lands and make such recommendations and suggestions as he may deem proper.

(2) The Secretary of State shall prepare a report which shall include the terms of all leases on sixteenth section school lands, or lands granted in lieu thereof, the condition of the title to all such lands and the current income from all sources earned by such lands, and he shall maintain such report in his office for examination by any interested person.

(3) Any state, county, municipal or school district official shall supply annually to the Secretary of State such sixteenth section management information as shall be requested by the secretary. Such information shall include, but not be limited to, the following items pertaining to all new leases, rights-of-way, easements and sales of school trust lands: the number of acres in each parcel; the consideration paid for each transaction; the length and expiration of each lease, easement, or right-of-way; and the use to be made of each parcel. The applicable public official shall likewise report information requested by the Secretary of State on schedule of revenue and expenses and principal fund investments. Such information shall include, but not be limited to, the following items: revenues received from various sources; expenses; escrow funds; principal funds; amounts of monies invested; dates of investment; where invested; form of investment; rate of return of each investment; and the amount of revenue earned upon each investment. The information must be submitted in electronic format in the manner required by the Secretary of State.

The action of mandamus shall lie as is provided under Section 29-3-9 to compel the transmittal of information under this subsection by any public official to the best of his knowledge and belief.

HISTORY: Codes, 1892, § 2577; 1906, § 2915; Hemingway's 1917, § 5250; 1930, § 6033; 1942, § 4122; Laws, 1978, ch. 525, § 4, eff from and after July 1, 1978; Laws, 2020, ch. 365, § 1, eff from and after July 1, 2020.

Editor's Notes — Laws of 1978, ch. 525, § 54, provides as follows:

"SECTION 54. It is the intent of the Legislature that all of the duties, responsibilities and authority vested in the State Land Commissioner under this act shall be transferred by virtue of Senate Bill No. 2470, Regular Session of 1978, to the Office of Secretary of State in accordance with said act."

Amendment Notes — The 2020 amendment substituted "Secretary of State" for "land commissioner" or "state land commissioner" and "secretary" for "commissioner" throughout the section; in (2), deleted "biennial" preceding "report"; and in (3), inserted "or school district" and made a related change, substituted "on schedule of revenue and expenses and principal" for "upon principal," inserted "revenues received from various sources; expenses; escrow funds; principal funds," and added the last sentence.

Cross References — The 2020 amendment substituted "Secretary of State" for "land commissioner" or "state land commissioner" and "secretary" for "commissioner" throughout the section; in (2), deleted "biennial" preceding "report"; and in (3), inserted "or school district" and made a related change, substituted "on schedule of revenue and expenses and principal" for "upon principal," inserted "revenues received from various sources; expenses; escrow funds; principal funds," and added the last sentence.

The 2020 amendment substituted "Secretary of State" for "land commissioner" or "state land commissioner" and "secretary" for "commissioner" throughout the section; in (2), deleted "biennial" preceding "report"; and in (3), inserted "or school district" and made a related change, substituted "on schedule of revenue and expenses and principal" for "upon principal," inserted "revenues received from various sources; expenses; escrow funds; principal funds," and added the last sentence.

Constitutional authority for legislation concerning sixteenth section land, see Miss. Const. Art. 8, § 211.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Lands granted in lieu of sixteenth sections, see §§ 29-3-15 et seq.

Sale or lease of sixteenth section lands by county board of supervisors, see § 29-3-27.

Mineral leases of sixteenth section lands, see § 29-3-99.

JUDICIAL DECISIONS

1. In general.

Sale of leasehold estate of sixteenth section lands to the state for nonpayment of taxes merged the unexpired term thereof in the greater fee simple title of the estate and extinguished it, so that the state land commissioner was without power to sell such leasehold and issue a patent therefor, since land commissioner's power hereunder is merely supervisory. McCullen v. Mercer, 192 Miss. 547, 6 So. 2d 465, 1942 Miss. LEXIS 38 (Miss. 1942).

§ 29-1-5. Value of state lands.

Whenever the state land commissioner shall need information as to the value of any lands belonging to or claimed by the state, whether the title thereto shall have been acquired by tax sale or otherwise, it shall be the duty of the county tax collector and the county assessor, in response to written inquiry by the state land commissioner, to make written certificate as to the value of such land and the improvements thereon, if any, to the best of their knowledge and belief.

Any assessor or tax collector failing to prepare and mail said certificates shall be guilty of a misdemeanor and on conviction shall be fined in any sum not exceeding one hundred dollars ($100.00) or be imprisoned in the county jail not exceeding ten (10) days, or be punished by both such fine and imprisonment.

HISTORY: Codes, Hemingway's 1921 Supp. §§ 5286a, 5286b; 1930, §§ 6039, 6040; 1942, §§ 4136, 4137; Laws, 1918, ch. 222.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 29-1-7. Suits for or on behalf of public lands.

The land commissioner may prosecute suits in the name of the state, concerning the public lands, through the attorney general, a district attorney, or some attorney at law employed by him for that purpose, with the consent of the governor.

HISTORY: Codes, 1892, § 2565; 1906, § 2903; Hemingway's 1917, § 5238; 1930, § 6019; 1942, § 4101.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — State's remedy against intruders on its land, see § 11-45-7.

Suits by board of supervisors to establish title to sixteenth sections, see § 29-3-3.

Institution of escheat proceedings by Secretary of State, see § 89-11-29.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Employment of counsel.

1. In general.

State alone can raise question of fraud of patentee practiced upon state in procuring patent to land sold to state for delinquent taxes. Wilkinson v. Steele, 207 Miss. 701, 43 So. 2d 110, 1949 Miss. LEXIS 381 (Miss. 1949).

The validity vel non of a patent from the state can be challenged under this section [Code 1942, § 4101] and Code 1930, § 6020 (Code 1942, § 4102), only in a proceeding instituted for that purpose by the land commissioner. Reliance Inv. Co. v. Johnson, 188 Miss. 227, 193 So. 630, 1940 Miss. LEXIS 12 (Miss. 1940).

Where Land Commissioner requested that suit to cancel patents issued by himself to purchasers of State land should be dismissed, court erred in denying request, since Commissioner has absolute control of suits in so far as interest of State is concerned and may dismiss suit whenever he sees fit to do so. Patterson v. State, 177 Miss. 227, 170 So. 645, 1936 Miss. LEXIS 245 (Miss. 1936).

Land commissioner cannot sue for damages claimed on account of defendant having unlawfully cut and removed timber belonging to the state on 16th section land. Edward Hines Yellow Pine Trustees v. State, 134 Miss. 194, 98 So. 445, 1924 Miss. LEXIS 243 (Miss. 1924).

Land commissioner may maintain replevin for crossties cut by trespasser from 16th section land sold to state for taxes. State v. Fitzgerald, 76 Miss. 502, 24 So. 872, 1898 Miss. LEXIS 105 (Miss. 1898), limited, Edward Hines Yellow Pine Trustees v. State, 134 Miss. 194, 98 So. 445, 1924 Miss. LEXIS 243 (Miss. 1924).

2. Employment of counsel.

Provision in contract between land commissioner and an attorney that the attorney was to receive a per centum as a fee, in a suit concerning public land, rendered the entire contract void. State ex rel. Brown v. Poplarville Sawmill Co., 119 Miss. 432, 81 So. 124, 1919 Miss. LEXIS 21 (Miss. 1919), overruled, Solomon v. Continental Baking Co., 174 Miss. 890, 166 So. 376, 165 So. 607, 1936 Miss. LEXIS 215 (Miss. 1936).

Neither land commissioner nor governor can allow any attorney a per centum of state's property or recoveries on sale thereof, as fee for bringing suit. State ex rel. Brown v. Poplarville Sawmill Co., 119 Miss. 432, 81 So. 124, 1919 Miss. LEXIS 21 (Miss. 1919), overruled, Solomon v. Continental Baking Co., 174 Miss. 890, 166 So. 376, 165 So. 607, 1936 Miss. LEXIS 215 (Miss. 1936).

Land commissioner cannot so contract with attorney to prosecute suits concerning public land as to lose his right to control the same. State ex rel. Brown v. Poplarville Sawmill Co., 119 Miss. 432, 81 So. 124, 1919 Miss. LEXIS 21 (Miss. 1919), overruled, Solomon v. Continental Baking Co., 174 Miss. 890, 166 So. 376, 165 So. 607, 1936 Miss. LEXIS 215 (Miss. 1936).

Land commissioner does not have power to fix compensation of counsel employed with consent of governor. State ex rel. Brown v. Poplarville Sawmill Co., 119 Miss. 432, 81 So. 124, 1919 Miss. LEXIS 21 (Miss. 1919), overruled, Solomon v. Continental Baking Co., 174 Miss. 890, 166 So. 376, 165 So. 607, 1936 Miss. LEXIS 215 (Miss. 1936).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 106 et seq.

§ 29-1-9. Suits for recovery of lands.

The land commissioner shall institute and prosecute, and prosecute where already instituted, all necessary suits to cancel patents to lands fraudulently obtained or issued, and to recover the possession of the land; and may, when ordered by the court, make any tender in any suit as well after as before suit is begun.

HISTORY: Codes, 1892, § 2587; 1906, § 2926: Hemingway's 1917, § 5261; 1930, § 6020; 1942, § 4102.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Attorney General's authority to prosecute suits to vacate fraudulent conveyances, see § 7-5-35.

District attorney's duty to prosecute suits to vacate fraudulent conveyances, see § 25-31-25.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Statute of limitations.

1. In general.

In an action to quiet title to tax forfeited land which plaintiff had obtained by patent from the state, the validity of which had been confirmed by an action against the state, defendant, claiming title under a quitclaim deed from the record owner and by adverse possession, could not challenge the validity of such patent on the ground of grossly inadequate consideration, since the validity of a patent from the state can be challenged only in a proceeding instituted for that purpose by the state land commissioner on behalf of the state. Comfort v. Landrum, 52 So. 2d 658, 1951 Miss. LEXIS 531 (Miss. 1951).

The validity vel non of a patent from the state can be challenged under this section [Code 1942, § 4102] and Code 1930, § 6019 (Code 1942, § 4101), only in a proceeding instituted for that purpose by the Land Commissioner. Reliance Inv. Co. v. Johnson, 188 Miss. 227, 193 So. 630, 1940 Miss. LEXIS 12 (Miss. 1940).

Where Land Commissioner requested that suit to cancel patents issued by himself to purchasers of State land should be dismissed, court erred in denying request, since Commissioner has absolute control of suits in so far as interest of State is concerned and may dismiss suit whenever he sees fit to do so. Patterson v. State, 177 Miss. 227, 170 So. 645, 1936 Miss. LEXIS 245 (Miss. 1936).

Judgment declaring tax title void in suit to confirm was a final adjudication of purchaser's title, justifying claim for refund of purchase money. Brown v. Ford, 112 Miss. 678, 73 So. 722, 1916 Miss. LEXIS 161 (Miss. 1916).

2. Statute of limitations.

Statute of limitations does not begin to run against right of patentee of land to a refund of the purchase price where the state did not have title until the land commissioner cancels the patent and presents it to the auditor. Wilson v. Naylor, 116 Miss. 573, 77 So. 606, 1917 Miss. LEXIS 346 (Miss. 1917).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 106 et seq.

§ 29-1-11. Fraudulent purchases declared void.

All fraudulent purchases of public lands heretofore made are void, excepting the rights of innocent purchasers without notice; and moneys and fees paid in furtherance of any such fraudulent purchase are forfeited to the state.

HISTORY: Codes, 1892, § 2586; 1906, § 2925; Hemingway's 1917, § 5260; 1930, § 6028; 1942, § 4110.

Cross References — Attorney General's authority to prosecute suits to vacate fraudulent conveyances, see § 7-5-35.

District attorney's authority to prosecute suits to vacate fraudulent conveyances, see § 25-31-25.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Innocent purchasers.

1. In general.

This section [Code 1942, § 4110] is highly penal and is limited to fraudulent purchases of public lands made prior to the enactment thereof. Merchants & Mfgs. Bank v. State, 200 Miss. 291, 25 So. 2d 585, 1946 Miss. LEXIS 293 (Miss. 1946).

The operation of this section [Code 1942, § 4110], was not suspended by construing a statute (Code 1942, § 1317) providing for suit against the state to confirm title and requiring the court to validate and perfect title based upon tax forfeited land patents unless the patent was obtained by "actual fraud on the part of the patentee, or his representative," to mean such fraud in the procurement of the patent as the making of false statements do or intentionally withholding important information from, the state land commissioner as to material facts in regard to which the applicant is required to make a disclosure under oath, and which false representations were either known to be false, or were made in reckless disregard of whether the same were true or false. State v. Roell, 192 Miss. 873, 7 So. 2d 867, 1942 Miss. LEXIS 70 (Miss. 1942).

Where land patents were canceled because of fraud practiced on Land Commissioner inducing him to execute patents, fees paid therefor were forfeited to State.

Streeter v. State, 180 Miss. 31, 177 So. 54, 1937 Miss. LEXIS 114 (Miss. 1937).

2. Innocent purchasers.

Bank purchasing 340 acres of lands from vendee of patentees from state after tax sale thereof to state, apparently in attempt to collect debt due it from such vendee, could not be subjected to forfeitures to state of all moneys, fees, and costs paid by it in connection with issuance of the patents, in the absence of proof of any fraud. Merchants & Mfgs. Bank v. State, 200 Miss. 291, 25 So. 2d 585, 1946 Miss. LEXIS 293 (Miss. 1946).

Bank purchasing 340 acres of land from vendee of patentees from state after tax sale thereof to state, apparently in attempt to collect debt due it from such vendee, was not subject to forfeiture to the state of all moneys, fees, and costs paid by it in connection with the issuance of the patents, where, because of the invalidity of the tax sale to the state, state had no title to the land which the bank could acquire from the state, directly or indirectly, fraudulently or otherwise. Merchants & Mfgs. Bank v. State, 200 Miss. 291, 25 So. 2d 585, 1946 Miss. LEXIS 293 (Miss. 1946).

Good faith of bank in acquiring, pursuant to settlement of debt, 340 acres of land from vendee of patentees from state after tax sale thereof to state, would be presumed in view of provisions of banking law entitling a bank to own such real estate as should be purchased by or conveyed to the bank in satisfaction of or on account of debts previously contracted in the course of its business. Merchants & Mfgs. Bank v. State, 200 Miss. 291, 25 So. 2d 585, 1946 Miss. LEXIS 293 (Miss. 1946).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 52, 137.

§ 29-1-13. Private claims to lands.

The land commissioner shall investigate all claims of persons to any of the public lands, and shall cause the necessary suits to be instituted and prosecuted, and all pending suits to be prosecuted, to settle controversies concerning them. In all such suits, his findings and report, made upon investigation, shall be prima facie correct.

HISTORY: Codes, 1892, § 2571; 1906, § 2909; Hemingway's 1917, § 5244; 1930, § 6021; 1942, § 4103.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

JUDICIAL DECISIONS

1. In general.

Jurisdiction over state tidewater lands to sustain an action to recover for removal of sand and gravel therefrom is vested in the state attorney general by reason of his statutory and common-law authority to represent the sovereign in the enforcement of its laws and protection of public rights, and not in the state land commissioner. State ex rel. Rice v. Stewart, 184 Miss. 202, 184 So. 44, 1938 Miss. LEXIS 306 (Miss. 1938).

§ 29-1-15. Counties and municipalities may grant lands to state.

The governing authorities of any county or municipality of the State of Mississippi are hereby authorized and empowered, in their discretion, to convey lands to the State of Mississippi for hospitals and other public purposes.

HISTORY: Codes, 1942, § 3975.5; Laws, 1954 Ex. Ch. 32, §§ 1-3, eff upon passage, approved Sept. 28, 1954.

Cross References — Sale of county lands by board of supervisors, see § 19-7-3.

Powers of municipalities, generally, see § 21-17-1.

Method of sale of lands in municipalities which were once patented either by the United States or the state of Mississippi, see § 29-1-67.

OPINIONS OF THE ATTORNEY GENERAL

The authority to convey title to property includes the power to lease property. A City may lease property at no cost to the State of Mississippi for the use of the National Guard pursuant to Section 29-1-15. Johnson, May 19, 1995, A.G. Op. #95-0114.

The Board of Trustees of Institutions of Higher Learning may accept donations of real and personal property for the benefit of the institutions of higher learning over which it has control and supervision. Layzell, April 30, 1998, A.G. Op. #98-0230.

The City of Jackson was authorized to proceed with the proposed sale of property to the state based on two appraisals obtained as required under state law for the purchase of property by the state. Horne, January 22, 1999, A.G. Op. #98-0806.

The City of Grenada could convey property to a community college pursuant to this section; upon such conveyance, title would be vested in the board of trustees and the trustees' successors in office. Criss, January 22, 1999, A.G. Op. #98-0780.

The governing authorities of any county or municipality may lease property at no cost to the State of Mississippi for the use of the Mississippi National Guard or the Mississippi State Guard pursuant to § 29-1-15. Pearson, Aug. 30, 2002, A.G. Op. #02-0483.

A county may purchase land and donate it to the Mississippi National Guard, and such purchase and donation is completely discretionary with the governing authority and there is no obligation to do such. Shaw, Jan. 24, 2003, A.G. Op. #03-0018.

No authority can be found which would permit the governing authorities of a county to bind its successors to an extended lease pursuant to this section or § 29-1-15. Williams, Dec. 23, 2004, A.G. Op. 04-0491.

The authority granted by this statute does not extend to permit the expenditure of county or municipal funds to construct a building for the sole purpose of donating the use of it to the state. Further, no specific provision is found in state law which empowers a county or municipalities to provide free utilities to such a structure for the benefit of the Department of Public Safety. Creekmore, Feb. 18, 2005, A.G. Op. 05-0060.

§ 29-1-17. Protection of public lands from trespass.

It is the duty of the land commissioner to see that trespasses be not committed on the public lands; and for that purpose he may cause all necessary inquiries and investigations to be made. He shall cause the proper suits to be instituted and prosecuted for the recovery of possession of any public land adversely held by any person, and for damages against any person trespassing thereon.

HISTORY: Codes, 1892, § 2589; 1906, § 2930; Hemingway's 1917, § 5265; 1930, § 6022; 1942, § 4104.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — State's remedy against intruders upon its lands, see § 11-45-7.

Damages for trespass, see § 29-1-19.

Division of damages for trespass where land was in two or more counties, see § 29-3-129.

Trespass on lands held by the state, see § 95-5-27.

Offense of cutting timber upon state lands, see § 97-7-65.

JUDICIAL DECISIONS

1. In general.

Jurisdiction over state tidewater lands to sustain an action to recover for removal of sand and gravel therefrom is not vested in the state land commissioner but is vested in the attorney general by reason of his statutory and common-law authority to represent the sovereign in the enforcement of its laws and protection of the public rates. State ex rel. Rice v. Stewart, 184 Miss. 202, 184 So. 44, 1938 Miss. LEXIS 306 (Miss. 1938).

Land commissioner can maintain replevin for crossties cut by trespasser from 16th section land sold to the state for taxes. State v. Fitzgerald, 76 Miss. 502, 24 So. 872, 1898 Miss. LEXIS 105 (Miss. 1898), limited, Edward Hines Yellow Pine Trustees v. State, 134 Miss. 194, 98 So. 445, 1924 Miss. LEXIS 243 (Miss. 1924).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 109 et seq.

§ 29-1-19. Damages for trespass.

If any person go or be upon any public land, and cut, fell, or otherwise injure any tree thereon or commit any other trespass on such land, the damages for such trespass shall not be assessed at less than the sum of two dollars ($2.00) per acre for each acre in every subdivision of forty (40) acres of land upon which any trespass was committed by the defendant, besides the statutory damages prescribed for trespass committed as to any tree or timber thereon. All such damages may be recovered in one (1) and the same action, and the secretary of state may institute suits for the recovery of any timber taken contrary to law; but this shall not apply to a person renting public land and having the license of the secretary of state to take trees or timber from contiguous woodland for fuel and the like.

HISTORY: Codes, 1892, § 2590; 1906, § 2931; Hemingway's 1917, § 5266; 1930, § 6023; 1942, § 4105; Laws, 1978, ch. 458, § 19, eff from and after January 1, 1980.

Cross References — Remedy against intruders upon state lands, see § 11-45-7.

Division of damages for trespass where land lies in two or more counties, see § 29-3-129.

Offense of cutting timber upon state lands, see § 97-7-65.

JUDICIAL DECISIONS

1. In general.

The land commissioner is authorized, under this section [Code 1942, § 4105], to institute and maintain, in the name of the state, an action for replevin for cross-ties cut by a trespasser from sixteenth section land, which had been sold to the state for nonpayment of taxes. State v. Fitzgerald, 76 Miss. 502, 24 So. 872, 1898 Miss. LEXIS 105 (Miss. 1898), limited, Edward Hines Yellow Pine Trustees v. State, 134 Miss. 194, 98 So. 445, 1924 Miss. LEXIS 243 (Miss. 1924).

§ 29-1-21. Record of tax lands.

The Secretary of State, on receiving from the chancery clerk the list of unredeemed lands sold to the state for taxes, shall enter the same in the register of tax lands by counties and in the regular order of townships, ranges and sections; and if the description of any of the lands be indefinite or defective and need to be made good by reference to the assessment roll under which it was sold, the Secretary of State may add to the description such alternative description as will clearly designate the land, prefacing the same with words "being as appears by the assessment roll of said county, for the year ________." The Secretary of State, with the approval of the Governor, may sell the tax lands in the manner provided in this chapter, at such prices and under such terms and conditions as the Secretary of State with the approval of the Governor may fix, subject to the limitations imposed in this chapter, or the Secretary of State, with the approval of the Governor, may transfer any of the tax lands to any other state agency, county, municipality or political subdivision of the state. Such agency or subdivision then may retain or dispose of those lands as provided by law. If a state agency, county, municipality, or other political subdivision of the state, has applied for transfer or purchase of the tax lands, it shall have priority over all other applicants except the original owner, his heirs or assigns. The courts shall not recognize claims by the original owner, his heirs or assigns after unredeemed lands are sold to the state for taxes and received by the Secretary of State's office or conveyed to a state agency, county, municipality or other political subdivision.

HISTORY: Codes, 1942, § 4071; Laws, 1936, ch. 174; Laws, 1994, ch. 583, § 3; Laws, 2010, ch. 415, § 2, eff from and after July 1, 2010.

Cross References — Recording of lists of lands sold for taxes by municipalities, see § 21-33-63.

Lists of lands sold for delinquent taxes, see §§ 27-41-79 et seq.

Delinquent drainage district taxes, see §§ 51-29-81, 51-33-43.

Lists of lands sold by the tax collector for unpaid drainage district taxes, see § 51-31-133.

JUDICIAL DECISIONS

1. In general.

Rural land forfeited for taxes may be sold by the land commissioner although surveyed into lots. State ex rel. Knox v. Lockyer, 140 Miss. 808, 106 So. 748, 1926 Miss. LEXIS 485 (Miss. 1926).

Such lands become taxable after being patented by the state to individuals and are thereafter subject to sale for taxes as other lands. Eastman, Gardner & Co. v. Barnes, 95 Miss. 715, 49 So. 258, 1909 Miss. LEXIS 267 (Miss. 1909).

Swamp and overflowed lands are not subject to sale for taxes. Howell v. Miller, 88 Miss. 655, 42 So. 129, 1906 Miss. LEXIS 198 (Miss. 1906).

One purchasing land by mistake from the state cannot have his money refunded on the ground that he already had title through the holder of a certificate from the treasurer of the swamp land commissioners as Laws 1902, ch. 29, forbids such use of the appropriation therein made. Cohn v. Pearl River Lumber Co., 80 Miss. 649, 32 So. 292, 1902 Miss. LEXIS 311 (Miss. 1902).

§ 29-1-23. Definition.

Wherever the words "original owner" appear in this chapter, they shall be construed to mean the owner of the title on date of sale of land for taxes.

HISTORY: Codes, 1942, § 4075; Laws, 1936, ch. 174.

§ 29-1-25. Lands acquired through error.

In cases where lands have passed from the ownership of individuals into that of the state by some mistake, oversight, or unintentional default, the land commissioner, with the approval of the governor and the attorney general, upon satisfactory proof shall, provided said lands are then held by the state, reconvey such lands to their original owners or to those claiming through the original owners upon payment of all taxes, damages, and costs accrued, on such equitable terms as may be agreed upon in each case by the owner and the land commissioner.

In cases where the owners of land have, through mistake, permitted the same to be sold for taxes, and afterwards, to protect their titles, have repurchased from the land commissioner at the price fixed by law the land so forfeited, the state shall, upon satisfactory proof of said facts with the written approval of the governor and the attorney general, refund said purchase money less the amount of taxes, costs, and damages; and the land commissioner shall make a report of such facts to the next session of the legislature and ask an appropriation therefor.

HISTORY: Codes, 1942, §§ 4071, 4072; Laws, 1936, ch. 174; Laws, 1946, ch. 195.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Lists of lands sold for taxes by municipalities, see § 21-33-63.

Lists of lands sold for taxes generally, see §§ 27-41-79, 27-41-81.

Redemption of lands sold for taxes by mistake, see §§ 27-45-13, 27-45-15.

Striking from tax list lands whose title is in doubt, see §§ 29-1-27, 29-1-29.

Cancellation of sales of land to the state for uncertainty in description, see § 29-1-31.

Lists of lands sold for unpaid drainage district taxes, see § 51-31-133.
Sale of lands for delinquent drainage district taxes, see § 51-33-43.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Mistaken purchase from state.
3. Evidence.

1. In general.

Former owner of land sold at invalid tax sale but which remained assessed to him, who continued to pay the taxes on the land for about 4 years after the tax sale without knowing that the land had been sold for taxes, was entitled to obtain patent upon payment of all taxes, damages and costs on such equitable terms as could be agreed upon by him and the Land Commissioner, subject to the approval of the Attorney General and the Governor. State v. Butler, 197 Miss. 218, 21 So. 2d 650, 1945 Miss. LEXIS 287 (Miss. 1945).

Issuance by land commissioner of forfeited tax patent to original owner for inadequate price and without exacting payment of accrued taxes of more than $100, damages and costs, was without authority and inoperative to convey state's title. State v. Harper, 195 Miss. 580, 15 So. 2d 680, 16 So. 2d 29, 1943 Miss. LEXIS 162 (Miss. 1943).

Dismissal of suit to confirm forfeited tax patent, upon adjudication of invalidity, without cancelation of invalid patents, was proper, in absence of cross bill by state asking such affirmative relief. State v. Harper, 195 Miss. 580, 15 So. 2d 680, 16 So. 2d 29, 1943 Miss. LEXIS 162 (Miss. 1943).

2. Mistaken purchase from state.

One purchasing land by mistake from the state cannot have his money refunded on the ground that he already had title through the holder of a certificate from the treasurer of the swamp land commissioners as Laws 1902, ch. 29, forbids such use of the appropriation therein made. Cohn v. Pearl River Lumber Co., 80 Miss. 649, 32 So. 292, 1902 Miss. LEXIS 311 (Miss. 1902).

3. Evidence.

Presumption arose in absence of proof to the contrary that $25 paid by former owner of land sold at invalid tax sale for the patent was sufficient to cover the taxes, damages and costs, where the land remained assessed to the former owner until shortly before he applied for the patent, during which time he continued to pay the taxes without knowing that the land had been sold for tax delinquency. State v. Butler, 197 Miss. 218, 21 So. 2d 650, 1945 Miss. LEXIS 287 (Miss. 1945).

Presumption arose in absence of proof to the contrary that the Land Commissioner, Attorney General and the Governor required payment of the full amount then remaining due as taxes, damages and costs before issuing patent to former owner of land sold at tax sale. State v. Butler, 197 Miss. 218, 21 So. 2d 650, 1945 Miss. LEXIS 287 (Miss. 1945).

§ 29-1-27. Lands mistakenly claimed by state stricken from tax list.

The land commissioner and auditor are hereby authorized to report to the attorney general any lands that may now or hereafter be claimed by the state on their respective records, the title to which is in doubt, and the attorney general shall make an investigation into the subject matter. If in his opinion the state has no title to said land, he shall so notify the auditor or land commissioner, who shall strike such land from the record in his office and notify, with certified lists of lands so stricken off, the clerk of the board of supervisors of the county in which such land is situated. The clerk shall report said land to the board of supervisors for new assessment or, if the land be vacant, state, or United States land, the board of supervisors shall have it stricken from the tax sales list in his office, and the tax collector shall be credited as in erroneous assessments.

HISTORY: Codes, 1892, § 3859; 1906, § 2946; Hemingway's 1917, § 5281; 1930, § 6047; 1942, § 4144; Laws, 1942, ch. 235.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Lists of lands sold for taxes generally, see §§ 27-41-79, 27-41-81.

Redemption of lands sold for delinquent taxes by mistake, see § 27-45-13.

Reconveyance of lands acquired by state through error, see § 29-1-25.

Striking of lands sold under invalid sale for delinquent taxes, see § 29-1-29.

Striking from records of land acquired under void tax sales, see § 29-1-31.

Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

§ 29-1-29. Lands mistakenly sold to state may be stricken.

The chancery clerk of any county is hereby authorized to report to the attorney general any lands that have been or may hereafter be sold to the state for delinquent taxes, the validity of which sale is in doubt, and the attorney general shall make an investigation into the subject matter. If in his opinion such sale of said land is void, he shall so notify such chancery clerk in writing, and the said clerk shall strike such land from the list of lands sold to the state of record in his office, and shall report said land to the board of supervisors for a new assessment if the assessment is invalid, or for an order for resale if the assessment is valid.

HISTORY: Codes, 1942, § 4145; Laws, 1942, ch. 235.

Cross References — Lists of lands sold for taxes generally, see §§ 27-41-79, 27-41-81.

Reconveyance of lands acquired by the state through error, see § 29-1-25.

Striking lands claimed by state from tax list where title is dubious, see § 29-1-27.

Striking lands acquired under void tax sales from lists of chancery court, see § 29-1-31.

Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

§ 29-1-31. Void tax sales stricken.

In all cases where it appears that the claim of title of the state to the lands on the records of the land office is void on account of uncertain description, or was acquired under tax sales which were void and which passed no title to the state, the land commissioner, with the written approval of the attorney general, is hereby authorized and directed to strike such lands from the lists in his office of lands sold to the state for delinquent taxes. The land commissioner shall transmit a list of the lands thus stricken from the records of forfeited state tax lands in his office to the clerk of the chancery court of the county in which such lands are situated, and the clerk of the chancery court shall note the same on the recorded lists in his office and shall file and preserve the list of lands thus stricken from the records in his office. The land commissioner shall at the same time give written notice to the assessor of the county that such lands have been stricken from the lists of lands held by the state for the nonpayment of taxes, and it shall be the duty of the assessor to assess such lands for taxes for the proper year or years at such valuation as the assessor may deem just. Such assessment shall be made in the manner provided by law for the assessment of property which has escaped taxation for former years. And the tax collector shall collect the taxes on such lands in the manner provided by law. The striking of such lands from the lists of forfeited state tax lands in the land commissioner's office, as herein provided, shall cancel all title or claim of the state to such lands, except for taxes due thereon at the time of the sale and accruing after the sale.

HISTORY: Codes, 1892, § 2917; Hemingway's 1917, § 5252; 1930, § 6038; 1942, §§ 4073, 4135; Laws, 1896, ch. 45; Laws, 1936, ch 174.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Assessment of property within municipalities which had previously escaped taxation, see § 21-33-55.

Void sales of property located within municipality for delinquent taxes, see § 21-33-59.

Assessment of property or persons which had formerly escaped taxation, see § 27-35-155.

Lists of lands sold for taxes generally, see §§ 27-41-79, 27-41-81.

Reconveyance of lands acquired by state in error, see § 29-1-25.

Striking lands claimed by state from tax lists where title is in doubt, see §§ 29-1-27, 29-1-29.

Refunding of purchase money in event of failure of state's title, see § 29-1-85.

Taxes remaining charge on land in event of failure of state's title, see § 29-1-91.

Lists of tax lands prepared; copies to counties, see § 29-1-123.

JUDICIAL DECISIONS

1. In general.

Where an action was brought in 1945 against the state to confirm a forfeited tax land patent and there was an adjudication of validity of the patent, and that though fraud had been perpetrated, the land commissioner and attorney general properly refused to cancel the tax sale to state and patent issued thereunder in an action brought therefor in 1949 by the heirs of the original owner of forfeited lands. Carney v. Anderson, 214 Miss. 504, 58 So. 2d 13, 1952 Miss. LEXIS 494 (Miss. 1952).

Land Commissioner with written authority of attorney general has authority to cancel void tax sales, but state tax collector has no authority to cancel void tax sales by suit, as his authority is limited to institution of suits for taxes which are past due and unpaid. State v. Rogers, 206 Miss. 643, 39 So. 2d 533, 1949 Miss. LEXIS 289 (Miss. 1949).

State tax collector is without authority to bring suit for taxes past due and unpaid, when there is outstanding a sale of lands to state for such taxes, regular and valid on its face, until tax sale is first cancelled by land commissioner, upon written authority from attorney general, or sale is cancelled by decree of court of competent jurisdiction, and decree rendered in suit brought by state tax collector without authority is void, is not res adjudicata against state or binding upon it. State v. Rogers, 206 Miss. 643, 39 So. 2d 533, 1949 Miss. LEXIS 289 (Miss. 1949).

This statute [Code 1942, § 4073] is general and not void as violative of § 90(u), Constitution of 1890, prohibiting special, local or private laws granting any lands under control of State to any person or corporation, since it applies uniformly to all persons similarly situated throughout the state and to all sales of same nature, for delinquent taxes. State v. Southern Pine Co., 205 Miss. 80, 38 So. 2d 442, 1949 Miss. LEXIS 414 (Miss. 1949).

This statute [Code 1942, § 4073] does not authorize donation of State's lands since it provides for denunciation and renunciation of title to lands, retaining basis tax lien, which State never owned and over which it had no control. State v. Southern Pine Co., 205 Miss. 80, 38 So. 2d 442, 1949 Miss. LEXIS 414 (Miss. 1949).

This statute [Code 1942, § 4073] does not empower attorney general to usurp function of courts, or to act judicially, but requires him to perform a constitutional duty of his office by making his legal learning and discretionary opinion available to proper state officer in exercise of state function in a matter of public policy and does not violate § 144, Constitution of 1890, providing that judicial power shall be vested in courts, and by § 2, that no person belonging to one department shall exercise power properly belonging to either of the others. State v. Southern Pine Co., 205 Miss. 80, 38 So. 2d 442, 1949 Miss. LEXIS 414 (Miss. 1949).

Chancery court is without jurisdiction of bill by owners of land seeking cancellation of claim of State to lands by reason of pretended tax sales as cloud on complainants' title after land commissioner, with written approval of attorney general, acting under this section [Code 1942, § 4073], has stricken lands from lists of lands sold to State for delinquent taxes because sales were void, since adjudication sought is, in effect, merely ratification of legal action of a state official, lawfully empowered to act, and statute does not provide for ratification thereof by any court. State v. Southern Pine Co., 205 Miss. 80, 38 So. 2d 442, 1949 Miss. LEXIS 414 (Miss. 1949).

§ 29-1-33. Sale price of tax lands.

The land commissioner with the approval of the governor is hereby authorized to sell to any bona fide purchaser any lands which may have been forfeited to the state for the nonpayment of taxes after the time allowed by law for redemption shall have expired, for such price as the land commissioner with the approval of the governor may fix; provided, however, that the minimum price for such forfeited tax land shall be two dollars ($2.00) per acre, except as otherwise provided herein. When the land commissioner has good reason to believe, however, that any of said lands are actually worth more than two dollars ($2.00) per acre, he shall cause a proper investigation to be made for the purpose of ascertaining the actual value of such lands, and such lands shall be sold for such price as the land commissioner with the approval of the governor may fix, provided that such sale price shall not be less than two dollars ($2.00) per acre as aforesaid. The land commissioner may fix different prices for separate tracts of land, but all such prices shall be subject to the approval of the governor.

In cases where it reasonably appears that the actual value of any of said lands is less than two dollars ($2.00) per acre, such lands may be sold by the land commissioner, with the approval of the governor, at a price less than two dollars ($2.00) per acre; provided, however, that in no such case shall such lands be sold for less than the amount of the state, levee board (where the land is situated in a levee district), and county taxes (not including, however, the drainage district tax, if any) for which said lands were sold to the state, plus an amount equal to all penalties, fees, damages, and costs accrued up to and including the date of the sale of such lands to the state.

In selling or contracting for the sale of state forfeited tax lands, it shall not be necessary that the land commissioner include in the sale price of such lands any state, drainage district, county, levee, or municipal taxes, or any special assessment.

HISTORY: Codes, 1942, § 4078; Laws, 1936, ch. 174; Laws, 1946, ch. 421; Laws, 1952, ch. 428.

Editor's Notes — By virtue of Chapter 421, Laws of 1946, the following mineral reservation was included in this Section and affects all patents issued by the State from the effective date of that act (April 10, 1946) through the date of the repeal of that language (April 11, 1952):

"In all sales hereunder there shall be reserved unto the state an undivided ½ of the usual ⅛ royalty interest in and to any and all gas, oil, sulphur, clay, gravel or other minerals produced on or from such lands for a period of twenty-five (25) years immediately following the issuance by the state of a patent thereto, and for as long thereafter as any such minerals are produced thereon or therefrom if being produced at the expiration of the twenty-five (25) year period. Consent of the state to the leasing of such lands for oil, gas and mineral purposes shall not be required, nor shall the state be entitled to participate in the proceeds realized from the sale of any oil, gas and mineral lease covering any such lands nor in any delay rentals paid thereunder. This provision shall not apply, however, to lands reconveyed to original owners under the provisions of section 4072 of the Mississippi Code of 1942."

Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Collection of sum due state arising from reserved mineral interests, see § 29-1-125.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Adequacy of consideration.

1. In general.

Public lands of the state are not subject to disposal by any officer, whatever his appointment or station may be, except as fixed by valid statutory provisions. State v. Harper, 195 Miss. 580, 15 So. 2d 680, 16 So. 2d 29, 1943 Miss. LEXIS 162 (Miss. 1943).

Issuance by land commissioner of forfeited tax patent to land, having a value in excess of $1 per acre, to the original owner, who remained in possession thereof, at a price of 50 cents per acre was in contravention of this section [Code 1942, § 4078] and inoperative to convey the state's valid tax title. State v. Harper, 195 Miss. 580, 15 So. 2d 680, 16 So. 2d 29, 1943 Miss. LEXIS 162 (Miss. 1943).

Upon adjudication of invalidity of forfeited tax title in action to confirm such title, because of failure of land commissioner to exact the consideration provided by law, court was without power to ascertain correct amount of consideration and confirm patent but would dismiss bill without prejudice to petitioner's privilege to pursue, and conform to, the statutory requirements in procuring another patent. State v. Harper, 195 Miss. 580, 15 So. 2d 680, 16 So. 2d 29, 1943 Miss. LEXIS 162 (Miss. 1943).

Dismissal of suit to confirm forfeited tax patent, upon adjudication of invalidity, without cancelation of invalid patents, was proper, in absence of cross bill by state asking such affirmative relief. State v. Harper, 195 Miss. 580, 15 So. 2d 680, 16 So. 2d 29, 1943 Miss. LEXIS 162 (Miss. 1943).

Sale of leasehold estate of sixteenth section lands to the state for nonpayment of taxes merged the unexpired term thereof in the greater fee simple title of the estate and extinguished it, so that the state land commissioner was without power to sell such leasehold and issue a patent therefor. McCullen v. Mercer, 192 Miss. 547, 6 So. 2d 465, 1942 Miss. LEXIS 38 (Miss. 1942).

The issuance of a patent for tax forfeited lands must be canceled where there is a gross inadequacy in a consideration of less than one-fourth of the lowest estimate made by any qualified witness who made any estimate at all, and when the real facts show that such lowest estimate was itself one in extremity, notwithstanding evidence that the land commissioner himself set an appraisal value approximating that for which the land was sold. State ex rel. McCullen v. Tate, 188 Miss. 865, 196 So. 755, 1940 Miss. LEXIS 87 (Miss. 1940).

The fixing of the price of sale to the former owner and the issuance of a patent to him by the land commissioner with the approval of the governor, together with the delivery of such patent, upon the payment of the purchase price agreed upon, left such official without power or authority to thereafter approve, sign and deliver another patent to the same land on the same day to another, notwithstanding that the latter's application therefor was first in point of time. Mortimer v. Curle, 183 Miss. 17, 183 So. 485, 1938 Miss. LEXIS 212 (Miss. 1938).

2. Adequacy of consideration.

The State Land Commissioner cannot validly sell the lands of the state at a grossly inadequate consideration. State ex rel. McCullen v. Tate, 188 Miss. 865, 196 So. 755, 1940 Miss. LEXIS 87 (Miss. 1940).

The issuance of a patent to state tax forfeited land for a grossly inadequate consideration cannot be allowed and is in contravention of the constitutional provision prohibiting the donation, directly or indirectly, to individuals or to corporations, of any of the lands belonging to, or under the control of the state. State ex rel. McCullen v. Tate, 188 Miss. 865, 196 So. 755, 1940 Miss. LEXIS 87 (Miss. 1940).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 64 et seq.

72 Am. Jur. 2d, State and Local Taxation §§ 812 et seq.

CJS.

85 C.J.S., Taxation §§ 1221 et seq.

§ 29-1-35. Sale of land after buildings destroyed; factors Secretary of State may consider in determining sales price for land.

Where buildings and improvements situated on tax-forfeited lands have been removed or destroyed by fire, windstorm, or flood, the Secretary of State may, in his discretion, sell the tax-forfeited lands for any amount he may deem reasonable, irrespective of the amount of taxes for which the property was sold to the state. The Secretary of State, in determining the sales price for the land, may take into account the cost of cleanup and removal of debris from destroyed buildings and improvements situated thereon, or may contract with the purchaser for cleanup and removal of debris from destroyed buildings as part of the consideration for sale of the land.

HISTORY: Codes, 1942, § 4133; Laws, 1942, ch. 235; Laws, 2012, ch. 339, § 1, eff from and after July 1, 2012.

Cross References — Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

§ 29-1-37. Application to purchase tax lands.

(1) Except as otherwise provided in subsection (2) of this section, any person desiring to purchase any state-forfeited tax land shall make application in writing to the Secretary of State for the purchase of the land, and shall state in the application:

(a) A correct description of the land sought to be purchased.

(b) The name of the former owner and the name of the person to whom the land was assessed at the time of the tax sale, and the post office address of the former owner and the post office address of the person to whom the land was assessed at the time of the sale, if known to the applicant.

(c) Whether or not the land is occupied at the date of the filing of such application, and the name of the person occupying the land, if any.

(d) The nature and value of the improvements on the land.

(e) The approximate quantity of the merchantable timber on the land, if any.

(f) Any other special information as the Secretary of State, with the approval of the Governor, may require.

Each application shall be signed by the applicant and shall contain a declaration that the statements and information submitted in the application are true and correct and are made under penalty of perjury. The Secretary of State may require any additional information with reference to the value of the lands, the nature and condition of the buildings and improvements on the lands, and the value of the timber on the lands as he may deem necessary. The applications shall be filed by the Secretary of State in the order in which they are received. Each application shall be given a serial number and shall be entered on a record book on the day it is received. The record book shall show the name of the applicant, the serial number of the application, and the county in which the property is situated.

(2) Except as otherwise provided in subsection (3) of this section, the Secretary of State, with the approval of the Governor, may dispose of any state-forfeited tax land by sealed bids after three (3) weeks' advertisement in a newspaper in the county in which the land is located.

(3) The Secretary of State may sell state-forfeited tax land by online auction. The Secretary of State may establish procedures and adopt administrative rules for the sale of state-forfeited tax land by online auction.

HISTORY: Codes, 1942, § 4079; Laws, 1936, ch. 174; Laws, 1942, ch. 235; Laws, 1994, ch. 583, § 4; Laws, 2003, ch. 331, § 1; Laws, 2016, ch. 414, § 2, eff from and after July 1, 2016; Laws, 2018, ch. 309, § 1, eff from and after passage (approved March 5, 2018).

Cross References — Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Application, necessity and sufficiency of.
3. Filing of application.
4. Fraud and misrepresentation.

1. In general.

The purpose of this statute [Code 1942, § 4079] was to set up a procedure by which the state would be protected from the perpetration of fraud against it in the purchase of tax forfeited land. State v. Lewis, 192 Miss. 890, 7 So. 2d 871, 1942 Miss. LEXIS 71 (Miss. 1942).

In view of the fact that this section [Code 1942, § 4079] continues in full force and effect, the benefit of a statute (Code 1942, § 1315) relating to quieting title based on tax forfeited land patents would be available to purchasers who acquired land through patents issued subsequently to its enactment, as well as to those who acquired land through patents issued prior to its passage. State v. Lewis, 192 Miss. 890, 7 So. 2d 871, 1942 Miss. LEXIS 71 (Miss. 1942).

Involving false application see Streeter v. State, 180 Miss. 31, 177 So. 54, 1937 Miss. LEXIS 114 (Miss. 1937).

2. Application, necessity and sufficiency of.

In a case in which appellant forfeited property to the State for failure to pay taxes, and never subsequently submitted an application to purchase the property, appellant was given all required notice of the State's sale of the property because the 2015 version of the administrative code did not require the Secretary of State to notify the prior owner that an application to purchase had been submitted. Green Hills Dev. Co., LLC v. Sec'y of State, 275 So. 3d 1077, 2019 Miss. LEXIS 254 (Miss. 2019).

An application for a patent from the state to tax forfeited land is sufficient if sworn to in fact by the applicant even though the jurat of a notary is not shown. State v. Allen, 200 Miss. 494, 27 So. 2d 695, 1946 Miss. LEXIS 314 (Miss. 1946).

Even assuming that this section [Code 1942, § 4079] permits several separate parcels of land to be included in one application for the purchase thereof, the affidavits thereto must cover the information required to be given by the applicant as to all the parcels, and as to those parcels not covered by the affidavit the applicant acquires no title, even though the Land Commissioner's office may have advised the applicant to the contrary. State v. Austin, 198 Miss. 752, 23 So. 2d 919, 1945 Miss. LEXIS 242 (Miss. 1945).

Where applicant filed with the State Land Commissioner six separate sheets or forms braided together, each containing an application for a separate parcel of land that had been forfeited to the state for taxes, but containing only one affidavit which was at the bottom of the first application which covered only one of the parcels and there was no indication that it was intended to cover all of the parcels, the applicant acquired no title to the other parcels not covered by the affidavit, notwithstanding that the Land Commissioner's office had advised the applicant that the affidavit would cover all the applications. State v. Austin, 198 Miss. 752, 23 So. 2d 919, 1945 Miss. LEXIS 242 (Miss. 1945).

A purchaser of state forfeited tax lands must first file a sworn written application which must give therein the detailed information mentioned in this section [Code 1942, § 4079], and such application is precedent to the right to obtain a patent to forfeited state tax lands, and when the application is taken by its four corners and considered in its material aspects, the averments thereof must be in a sufficient approximation to the substantial truth as not to amount to a palpable misrepresentation of the facts. State ex rel. McCullen v. Tate, 188 Miss. 865, 196 So. 755, 1940 Miss. LEXIS 87 (Miss. 1940).

The filing of an application under oath giving the information called for therein is a condition precedent to the right to obtain a patent from the state to tax forfeited land, and such application constitutes a part of the patentee's muniment of title with which a vendee of the patentee is charged with notice. State ex rel. McCullen v. Adams, 185 Miss. 606, 188 So. 551, 1939 Miss. LEXIS 174 (Miss. 1939).

The land commissioner is without authority to waive the information called for by law to be contained in the application for a patent from the state to tax forfeited land. State ex rel. McCullen v. Adams, 185 Miss. 606, 188 So. 551, 1939 Miss. LEXIS 174 (Miss. 1939).

3. Filing of application.

The fact that the land commissioner is required to file the applications in the order in which they are received and to give each of them a serial number does not require the commissioner to issue a patent to the first applicant for the purchase of the land since an applicant does not become entitled to acquire a patent until the price of the land has been fixed and the sale has actually been made, with the approval of the governor. Mortimer v. Curle, 183 Miss. 17, 183 So. 485, 1938 Miss. LEXIS 212 (Miss. 1938).

4. Fraud and misrepresentation.

As to statute (Code 1942, § 1317) providing for suit to confirm patent issued for tax forfeited land and requiring the court to validate and perfect the title unless the patent was obtained by "actual fraud on the part of the patentee, or his representatives," quoted phrase was to be construed to mean such fraud in the procurement of the patent as the making of false statements to, or intentional withholding important information from, the state land commissioner as to material facts in regard to which the applicant is required to make a disclosure under oath hereunder, and which false representations were either known to be false or were made in reckless disregard of whether the same were true or false. State v. Roell, 192 Miss. 873, 7 So. 2d 867, 1942 Miss. LEXIS 70 (Miss. 1942).

Where an application for a patent from the state to tax forfeited land represented that the land was for the benefit of the applicant, when in fact it was purchased on behalf of another, that the land was "cut-over land" when in fact a good portion of it was cleared and opened, so that the land was sold for a grossly inadequate value, as apparent from the fact that thereafter the patentee sold it to another for an amount ten times that paid for the land to the state, the patent to the applicant and the applicant's conveyance to a third person would be set aside for fraud, the latter not being an innocent purchaser for value. State ex rel. McCullen v. Adams, 185 Miss. 606, 188 So. 551, 1939 Miss. LEXIS 174 (Miss. 1939).

The concealment, by omission thereof from the application for a patent from the state to tax forfeited land, of the fact that a good portion of the tract applied for had been cleared was the principal inducement to the sale at such a grossly inadequate price, and constituted a fraud upon the state warranting a cancelation of the patents issued to the defendant and also of the deed of conveyance from such defendant to the other defendant in the action. State ex rel. McCullen v. Adams, 185 Miss. 606, 188 So. 551, 1939 Miss. LEXIS 174 (Miss. 1939).

§ 29-1-39. Contract for sale of tax lands.

The Secretary of State with the approval of the Governor may contract to sell any state forfeited tax lands, including state lands lying within municipalities, even though said lands may have been subdivided into blocks, lots, divisions, or otherwise and sold to the state by such descriptions. The purchase price required in the contract for the sale of state forfeited tax land shall be the same as that required in direct sale of state forfeited tax lands. In the event the Secretary of State with the approval of the governor shall decide that any state forfeited tax land shall be contracted for sale, the Secretary of State with the approval of the governor shall fix a price for the sale of such lands. Said contract for the sale of such lands shall provide that a part of the purchase price shall be paid in cash, and that the balance of such purchase price shall be paid in equal annual installments extending over a period not to exceed five (5) years, said period to be fixed by the Secretary of State. The purchaser in said contract of sale shall agree that he shall pay all installments of the purchase price and all taxes and special assessments that may become due on said lands during the continuance or life of said contract, that he shall not cut any merchantable timber nor commit any waste of any kind on said land without the written permission of the Secretary of State and that he shall not allow any other person to cut any merchantable timber therefrom or permit any waste of any kind thereon until said purchaser has secured a patent from the state in accordance with his contract of sale. Contracts for sale of state forfeited tax lands shall not be transferred nor assigned without the written consent of the Secretary of State. All applications for contracts of sale shall be made on written forms prepared by the attorney general and approved by the Secretary of State and shall be kept on file in the office of the Secretary of State as public records. At such time as the purchaser shall have paid the entire purchase money under any contract of sale and shall have complied with all of the other provisions of said contract of sale, the Secretary of State shall issue a state land patent as in other cases of the sale of state lands.

HISTORY: Codes, 1942, § 4080; Laws, 1936, ch. 174; Laws, 1978, ch. 458, § 20, eff from and after January 1, 1980.

Cross References — Lists of tax sale lands sold to individuals, see §§ 27-41-79, 27-41-81.

Trespass on public lands, see §§ 29-1-17, 29-1-19.

Sales price of tax forfeited land, see § 29-1-33.

Penalty for cutting timber before purchase price has been paid, see § 29-1-41.

Taxation of lands under contract of sale, see § 29-1-43.

Cancellation of contract of sale and forfeit of purchase price, see §§ 29-1-45, 29-1-47.

JUDICIAL DECISIONS

1. In general.

Validity of purchase of land for taxes by State and regularity of its patent issued to purchaser is presumed, in absence of showing of irregularity, and sustains claim of ownership by purchaser to land described in patent. Winstead v. Winstead, 204 Miss. 787, 38 So. 2d 118, 1948 Miss. LEXIS 406 (Miss. 1948).

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Lands §§ 64 et seq.

§ 29-1-41. Unlawful to cut timber until purchase price is paid.

It shall be unlawful for any person who has contracted to purchase any state forfeited tax lands to cut, sell, or dispose of any merchantable timber on said lands before the purchase price has been fully paid and a patent duly executed and delivered as provided in this chapter. Any person who shall cut, sell, or dispose of any merchantable timber on any such lands before the purchase price has been fully paid and a patent duly executed and delivered shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment, in the discretion of the court.

HISTORY: Codes, 1942, § 4084; Laws, 1936, ch. 174.

Cross References — Trespass on public lands, see §§ 29-1-17, 29-1-19.
Contracts for sale of forfeited tax lands, see § 29-1-39.
Lists of forfeited tax lands sold to individuals, see §§ 29-41-79, 27-41-81.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.
Revocation of license to cut and remove timber as affecting rights in respect of timber cut but not removed. 26 A.L.R.2d 1194.

§ 29-1-43. Lands under contract for sale taxable.

When any contract for the sale of state forfeited tax lands shall be made, as provided in Section 29-1-39, such lands shall then become taxable in all respects and to the same extent and in like manner as where patents are issued, except that such lands under contract for sale shall not be sold for taxes while the state is the holder of the legal title. It shall be the duty of the land commissioner to give notice in writing to the clerk of the chancery court of the county in which the land is situated, and likewise the clerk of the municipality if such land be situated in a municipality, that such land is under contract for sale, giving the name of the purchaser and the price. The chancery clerk, and the municipal clerk where the land is located in a municipality, shall file said notices and enter the land upon the assessment rolls and shall clearly designate that such land is public land which has been contracted for sale. Such land shall thereupon be assessed for taxes as other lands are assessed, and the tax collector of the county, and the municipality where said land is located in a municipality, shall collect the taxes thereon as in cases of additional assessments, as provided by Section 29-1-83, with reference to patents.

HISTORY: Codes, 1942, § 4081; Laws, 1936, ch. 174.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Contract for sale of tax forfeited lands, see § 29-1-39.

§ 29-1-45. Cancellation of contract of sale.

If taxes become delinquent on lands which are contracted for sale or on any part thereof, the tax collector shall, within thirty (30) days after such delinquency, certify such fact in writing to the Secretary of State and said tax collector shall neither advertise nor sell such land at a tax sale. If said land should be sold at a tax sale, the sale shall be void as against the state, and the state's title thereto shall not be affected by said sale. Likewise, if such a tax sale is made, the tax collector shall be liable on his official bond to the purchaser at said sale in the penal sum of twenty-five dollars ($25.00) plus all actual damages suffered by said purchaser. Within fifteen (15) days after receipt of notice from the tax collector that said lands are delinquent for taxes, or if no notice is given by said tax collector then within thirty (30) days after the Secretary of State ascertains that there is a delinquency in the payment of taxes on said land, the Secretary of State shall cancel the contract of sale and shall, within said period of thirty (30) days, inform the contract purchaser of such cancellation by mail at the post office address contained in the application. The said notice shall be given by registered mail with return receipt requested. The Secretary of State shall likewise immediately notify the clerk of the board of supervisors of the county in which said land is situated of the cancellation and the clerk shall report said action to the board of supervisors of said county, who shall have said land stricken from the assessment roll and also stricken from the tax sale list, if the same is contained thereon. The land shall then be re-entered on the record in the Secretary of State's office, the former entry of the contract of the purchase shall be marked "canceled" on the Secretary of State's records, and the land shall become subject to disposition by the Secretary of State in the same manner as if no contract of sale had been made. In case the Secretary of State should fail to give notice of the cancellation of said contract or should fail to cancel said contract within the time stipulated herein, the Secretary of State may cancel and give said notice of cancellation on any subsequent date. If said land is located in a municipality, the acts and duties provided herein to be performed by the clerk of the board of supervisors and the board of supervisors shall be performed in like manner by the municipal clerk and the governing authorities of said municipality.

HISTORY: Codes, 1942, § 4082; Laws, 1936, ch. 174; Laws, 1978, ch. 458, § 21, eff from and after January 1, 1980.

Cross References — Purchase price paid by purchaser forfeited to state as liquidated damages on cancellation of contract as provided in this section, see § 29-1-47.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 64 et seq.

§ 29-1-47. Purchase price forfeited.

On the cancellation of the contract of sale, as provided in the preceding sections of this chapter, that portion of the purchase price paid by the purchaser shall be forfeited to the state as liquidated damages, and the contract purchaser shall lose all rights which he had under the contract of sale. If any waste has been committed or allowed by the purchaser on said land, said purchaser shall, in addition to the liquidated damages, be liable for all actual damages to said land.

HISTORY: Codes, 1942, § 4083; Laws, 1936, ch. 174.

§ 29-1-49. Tax land may be sold to drainage district.

The land commissioner, with the approval of the Governor, is hereby authorized to sell state forfeited tax lands lying within a drainage district to the board of drainage commissioners of such district in the manner provided by Section 51-33-45.

HISTORY: Codes, 1942, § 4085; Laws, 1936, ch. 174.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Exemption of drainage district from limitation of quantity of land permitted to be purchased in one year, see § 29-1-73.

Authority of drainage district to purchase tax lands, see § 51-33-45.

JUDICIAL DECISIONS

1. In general.

A drainage district with local commissioners is a subdivision of the state government with limited jurisdiction and powers and it has only such powers as are expressly granted to it by the statute or as may be necessarily implied from such legislation. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547, 1951 Miss. LEXIS 461 (Miss. 1951).

A drainage district has no express power or implied power to buy an undivided interest of land except for drainage purposes. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547, 1951 Miss. LEXIS 461 (Miss. 1951).

While tenants in common may be required to bear their proportionate share of expenditures and disbursements and to pay off proportionately the purchase price for outstanding titles and claims, a drainage district has not the power to spend funds to meet these obligations as a tenant in common with others. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547, 1951 Miss. LEXIS 461 (Miss. 1951).

§ 29-1-51. Tax land may be sold to municipality.

The Secretary of State, with the approval of the Governor, is hereby authorized to sell state forfeited tax lands situated within the corporate limits of a municipality to the governing authorities of such municipality in the manner provided by law. If a municipality makes an application to purchase those lands, the municipality shall have priority over all other applicants except the original owner, his heirs or assigns.

As an alternative method to disposing of tax lands situated within a municipality, the Secretary of State, with the approval of the Governor, may transfer those lands to the municipality, which then may retain or dispose of the lands as provided by law.

HISTORY: Codes, 1942, § 4086; Laws, 1936, ch. 174; Laws, 1994, ch. 583, § 5, eff from and after July 1, 1994.

Cross References — Lands struck off to municipality, see § 21-33-69.

Taxing of lands acquired by municipality, see § 21-33-71.

Purchases by municipalities at state tax sales, see § 21-33-73.

§ 29-1-53. Sale of tax; forfeited improvements.

Where one party owns lands and another owns the improvements thereon, and the lands and improvements are assessed separately and the improvements are sold to the state for nonpayment of taxes, the state land commissioner shall have authority to sell and dispose of said improvements by patent under the same terms and conditions that he may dispose of tax-forfeited lands.

HISTORY: Codes, 1942, § 4129; Laws, 1942, ch. 235.

Editor's Notes — Section 7-11-4 provides that the words “state land commissioner,” “land commissioner,” “state land office,” and “land office” shall mean the Secretary of State.

Cross References — Assessment and sale for taxes of improvements, see § 27-35-51.

Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

§ 29-1-55. Sale of tax-forfeited timber.

Where timber standing on lands is assessed to persons other than those owning the fee title to the lands, and the taxes thereon are not paid and such timber is sold to the state for nonpayment of taxes, the Secretary of State may sell and dispose of such timber rights in the same manner as he may sell and dispose of tax-forfeited lands, and the proceeds received by said Secretary of State for the sale thereof shall be divided between the state, county, levee board, and drainage district as provided by law for the disposition of the proceeds derived from the sale of tax-forfeited lands. The owner in fee of lands may purchase from the state any tax-forfeited timber rights on lands owned by him in fee, regardless of the amount of lands that he may own.

HISTORY: Codes, 1942, § 4131; Laws, 1942, ch. 235; Laws, 1997, ch. 412, § 2; Laws, 2001, ch. 517, § 4, eff from and after Mar. 30, 2001.

Cross References — Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

§ 29-1-57. Sale of buildings, personal property and land associated with tax lands; factors Secretary of State may consider in determining sale price for land.

Where tax-forfeited lands have situated thereon buildings or personal property which are deteriorating, the Secretary of State may sell and dispose of the buildings, personal property and land for any consideration he may deem reasonable, irrespective of the amount of taxes for which same was sold. Where the buildings or personal property have deteriorated to the condition they are unsafe or constitute a nuisance, the Secretary of State, in determining the sales price for the land, may take into account the cost of cleanup and removal of the buildings and personal property situated thereon, or may contract with the purchaser for cleanup and removal of the buildings and personal property as part of the consideration for sale of the land.

HISTORY: Codes, 1942, § 4132; Laws, 1942, ch. 235; Laws, 1994, ch. 583, § 6; Laws, 2012, ch. 339, § 2, eff from and after July 1, 2012.

Cross References — Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

§ 29-1-59. Sale price of swamp and overflowed lands.

The minimum sale price of the swamp and overflowed lands is one dollar and twenty-five cents ($1.25) per acre, and the land commissioner may sell them at that price unless the governor and land commissioner deem any of said lands to be worth more than said sum, in which event it will be their duty to fix the price of such of said lands at what they shall believe the interest of the state to require. When the price has been so fixed, it shall be entered of record on the register containing the list of such lands for sale, and shall not be reduced within two (2) years thereafter nor sold at any other price, until changed in like manner.

HISTORY: Codes, 1892, § 2574; 1906, § 2912; Hemingway's 1917, § 5247; 1930, § 6030; 1942, § 4112.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Sale price of internal improvement lands may be same as swamp and overflowed lands, see § 29-1-61.

Method of fixing price for sale of other lands, see § 29-1-65.

JUDICIAL DECISIONS

1. In general.

Such lands after being patented to individuals by the state, become taxable, and may thereafter be sold for taxes as other lands. Eastman, Gardner & Co. v. Barnes, 95 Miss. 715, 49 So. 258, 1909 Miss. LEXIS 267 (Miss. 1909).

Swamp and overflowed lands are not subject to sale for taxes. Howell v. Miller, 88 Miss. 655, 42 So. 129, 1906 Miss. LEXIS 198 (Miss. 1906).

§ 29-1-61. Sale price of internal improvement lands.

The internal improvement lands may be sold by the land commissioner at the same price as the swamp and overflowed lands, subject to be fixed in the same manner and under like regulations.

HISTORY: Codes, 1892, § 2575; 1906, § 2913; Hemingway's 1917, § 5248; 1930, § 6031; 1942, § 4113.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Sale price of swamp and overflowed lands, see § 29-1-59.

§ 29-1-63. Sale price of Chickasaw school lands.

The Chickasaw school lands are to be sold by the land commissioner at the price of not less than Six Dollars ($6.00) per acre unless said lands are situated in a levee district outside of and unprotected by the levees, in which case they shall be sold for not less than One and Twenty-five Hundredths Dollars ($1.25) per acre.

HISTORY: Codes, 1892, § 2576; 1906, § 2914; Hemingway's 1917, § 5249; 1930, § 6032; 1942, § 4121.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Constitutional authority for legislation governing sale of Chickasaw school lands, see Miss. Const. Art. 8, § 211.

Duties and powers of Secretary of State generally, see § 7-11-11.

Commissioner's supervisory power over Choctaw school lands, see § 29-1-3.

Duty of a county board of education in any county within the Chickasaw cession to ascertain whether such county has title to any Chickasaw lands, and, if so, to enter into lease of such lands, see § 29-3-141.

Chickasaw school fund, see § 37-61-31.

§ 29-1-65. Sale price of other lands.

(1)(a) All lands fallen or falling to the state by escheat, or coming to it in any other manner; all lands belonging to the State of Mississippi which were ceded to the State of Mississippi by the United States government for a seat of government which are located in Pearl River swamp and subject to overflow, and all other seat of government lands which have been surveyed into blocks and lots in the City of Jackson, Mississippi, which were a part of the original lands ceded by the federal government to the State of Mississippi for a seat of government and which have never been disposed of by the State of Mississippi; and all accretions near the mouth of the Pascagoula River, heretofore surveyed by the state; and all other lands within the borders of the state, not belonging to the United States nor owned by another, are property of the state and are to be managed and disposed of through the Secretary of State. The Secretary of State, with the approval of the Governor, may sell any of such lands, (except as otherwise provided in this chapter), at the same price as the swamp and overflow lands, subject to be fixed in the same manner and under like regulations.

(b) Provided that all lands belonging to the State of Mississippi which were ceded to the State of Mississippi by the United States government for a seat of government which are located in Pearl River swamp and subject to overflow, and all other seat of government lands which have been surveyed into blocks and lots in the City of Jackson, Mississippi, which were a part of the original lands ceded by the federal government to the State of Mississippi for a seat of government and which have never been disposed of by the State of Mississippi, shall not be sold by the Secretary of State, with the approval of the Governor, unless and until the Legislature by legislative act shall have approved the sale of such seat of government lands, or any part thereof.

(2) If, subsequent to the sale of lands specified in this section, the State of Mississippi shall purchase or otherwise reacquire such lands, the lands so acquired shall return to its previous status and be known as lands originally ceded to the State of Mississippi by the United States government for a seat of government.

HISTORY: Codes, 1892, § 2580; 1906, § 2919; Hemingway's 1917, § 5254; 1930, § 6034; 1942, § 4123; Laws, 1936, ch. 174; Laws, 1948, ch. 490; Laws, 2008, ch. 465, § 1, eff from and after July 1, 2008.

Cross References — Sale of swamp and overflowed lands, see § 29-1-59.
Sale of internal improvement lands, see § 29-1-61.
Sale of lands in municipalities, see § 29-1-67.
Sale of lands in lieu of sixteenth sections, see § 29-3-15.

JUDICIAL DECISIONS

1. In general.

In an action to confirm title to land that was part of the Lowry Island Lands, the trial court erred in overruling the state's demurrer since, under the provisions of this section, the Land Commissioner could not sell such lands. State v. Hanson Properties, Inc., 371 So. 2d 871, 1979 Miss. LEXIS 2094 (Miss. 1979).

The decisions in Huber v. Freret (1925) 138 Miss 238, 103 So 3, and Jenkins v. Bernard (1927) 148 Miss 293, 114 So 488, holding that the land commissioner was without authority to sell urban property that had been surveyed and divided into lots and blocks, are reaffirmed; those whose patents have been invalidated by said decisions and other cases following them may have secured valid patents by complying with Section 29-1-69. Land Comm'r v. Hutton, 307 So. 2d 415, 1974 Miss. LEXIS 1490 (Miss. 1974).

Marsh lands subject to the ebb and flow of the tide as well as noncontiguous accreted lands in rivers or bays subject to the tides are not subject to sale by the state for private purposes; for the ownership of such land by the state was and is as trustee for the use and benefit of all of the people of the state. International Paper Co. v. Mississippi State Highway Dep't, 271 So. 2d 395, 1972 Miss. LEXIS 1273 (Miss. 1972), cert. denied, 414 U.S. 827, 94 S. Ct. 49, 38 L. Ed. 2d 61, 1973 U.S. LEXIS 371 (U.S. 1973).

A 1915 patent was valid as to some 30 acres of land in Jackson which were part of the lands granted to the State of Mississippi by the United States as "seat of government lands," which were swamp and overflowed lands, congenial only to bullfrogs and mosquitoes, subject to annual flooding, unimproved, producing no income, having no value or suitability for any residential or business purpose and, if possessing any value whatever, it was necessarily for "timber, agriculture or pasture, and which was of the character and type, notwithstanding that it had been surveyed into lots and blocks, usually and ordinarily sold by the acre or upon an acreage basis. State v. Stockett, 249 So. 2d 388, 1971 Miss. LEXIS 1162 (Miss. 1971).

Complaint, in suit to confirm title to land under patent issued plaintiff in 1936, which alleged that prior patent was issued to another in 1926 but failed to allege that original buyer was given notice of sale or that he did not obtain lands in good faith or that price was unfair and unreasonable, was demurrable. Easterling v. Howie, 179 Miss. 680, 176 So. 585, 1937 Miss. LEXIS 65 (Miss. 1937).

Under statutes relating to lands to be managed and disposed of through State Land Office and authorizing Land Commissioner to issue patents to lands sold in the city of Jackson, and providing for notice by registered mail to be given to prior purchaser, notice must be given to original purchaser or his vendee before the lands are available for sale, and there can be no valid sale without such notice. Easterling v. Howie, 179 Miss. 680, 176 So. 585, 1937 Miss. LEXIS 65 (Miss. 1937).

Statute relating to sale of blocks and lots of land, title of which is vested in State, situated in municipalities of the State in and outside city of Jackson was intended to confer on purchasers of land ceded to State as seat of government lands same privileges as those conferred on holders of invalid titles from Land Commissioner. Easterling v. Howie, 179 Miss. 680, 176 So. 585, 1937 Miss. LEXIS 65 (Miss. 1937).

Where legislature adopted statute providing for sale of lots in tract donated to State by Federal Government, and provided for a reservation of lots for "public convenience" of city, city was authorized to convey lot reserved to railroad for freight depot. Jackson v. Alabama & V. R. Co., 172 Miss. 528, 160 So. 602, 1935 Miss. LEXIS 159 (Miss. 1935).

Act of Congress granting lands for seat of government to State held grant in praesenti completed by acceptance and location by State legislature. Westbrook v. Jackson, 165 Miss. 660, 145 So. 86, 1932 Miss. LEXIS 299 (Miss. 1932).

In a suit between city and individuals involving title to lots, question whether lots reserved by legislature and commissioners from sale by State were adaptable for health, ornament, and convenience of city could not be raised, legislature and its Commissioners being judges of adaptability of lots. Westbrook v. Jackson, 165 Miss. 660, 145 So. 86, 1932 Miss. LEXIS 299 (Miss. 1932).

Act providing for sale of State lands except those reserved for health, ornament, and convenience of city held dedication of lots reserved without further grant. Westbrook v. Jackson, 165 Miss. 660, 145 So. 86, 1932 Miss. LEXIS 299 (Miss. 1932).

OPINIONS OF THE ATTORNEY GENERAL

The clear reading of Section 29-1-65 authorizes the sale of seat of government land with legislative authority. Stringer, May 19, 2006, A.G. Op. 06-0207.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 25 et seq., 64 et seq.

§ 29-1-67. Sale of lands in municipalities.

Land situated within municipalities which has once been patented either by the United States government or the State of Mississippi, and the title to which has thereafter, by escheat, tax sale, or otherwise become vested in the State of Mississippi, may be sold or contracted for sale by the land commissioner, with the approval of the governor, at such price and under such terms and conditions as they may fix, even though it may have been subdivided into lots, blocks, divisions, or otherwise and escheated, or was sold to the state by such description. In selling such lands and the improvements thereon, if any, the land commissioner shall take into consideration the location thereof and the improvements situated thereon, and may ask and obtain greater prices therefor than for other lands.

HISTORY: Codes, 1930, § 6035; 1942, § 4124; Laws, 1926, ch. 185; Laws, 1936, ch. 174.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Method of sale for taxes of city or town lots, see § 27-41-61.

§ 29-1-69. Sale of certain lands sold by municipalities.

Lands situated in municipalities which have heretofore escheated to or titles thereto become vested in the state, and which have been sold by the land commissioner of the state at a fair and reasonable price but under invalid patents, may be conveyed to the original holder of the patents or, if he has sold same, to his vendee at such reasonable price as the land commissioner with the approval of the governor and the attorney general shall fix; and such purchaser shall be allowed as credit on such price the amount heretofore paid therefor, with six percent (6%) interest compounded annually on the same not to exceed the present value as fixed by such officers. And no land heretofore sold, or attempted to be sold, shall again be sold until a period of thirty (30) days after the mailing of notice by registered mail to the original buyer or his vendee, if his post-office address is known, informing such buyer or his vendee of his rights hereunder. Whenever the post office address of such person is not known, notice shall be published in a newspaper published in the county where the land is located, once a week for two (2) weeks, giving a description of such land and of the rights of such buyers or their vendees. No deed shall be made to such buyer or his vendee until such person shall make affidavit that he bought the same in good faith and has not since sold his interest therein.

HISTORY: Codes, 1930, § 6036; 1942, § 4125; Laws, 1926, ch. 185; Laws, 1936, ch. 174.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Notice.
3. Pleading.

1. In general.

A 1915 patent was valid as to some 30 acres of land in Jackson which were part of the lands granted to the State of Mississippi by the United States as "seat of government lands," which were swamp and overflowed lands, congenial only to bullfrogs and mosquitoes, subject to annual flooding, unimproved, producing no income, having no value or suitability for any residential or business purpose and, if possessing any value whatever, it was necessarily for "timber, agriculture or pasture, and which was of the character and type, notwithstanding that it had been surveyed into lots and blocks, usually and ordinarily sold by the acre or upon an acreage basis. State v. Stockett, 249 So. 2d 388, 1971 Miss. LEXIS 1162 (Miss. 1971).

Statute relating to sale of blocks and lots of land, title of which is vested in State, situated in municipalities of the State in and outside City of Jackson was intended to confer on purchasers of land ceded to State as seat of government lands same privileges as those conferred on holders of invalid titles from Land Commissioner. Easterling v. Howie, 179 Miss. 680, 176 So. 585, 1937 Miss. LEXIS 65 (Miss. 1937).

Patents of lands escheated to State within municipality pending suit to cancel original patents held void in view of proviso in statute authorizing patents. Cranford v. State, 159 Miss. 32, 131 So. 638, 1931 Miss. LEXIS 11 (Miss. 1931).

Land commissioner held without authority to issue patent to urban public lands owned by the state, and surveyed into lots for business purposes. Huber v. Freret, 138 Miss. 238, 103 So. 3, 1925 Miss. LEXIS 44 (Miss. 1925).

The decisions in Huber v. Freret (1925) 138 Miss 238, 103 So 3, and Jenkins v. Bernard (1927) 148 Miss 293, 114 So 488, holding that the land commissioner was without authority to sell urban property that had been surveyed and divided into lots and blocks, are reaffirmed; those whose patents have been invalidated by said decisions and other cases following them may have secured valid patents by complying with this section [Code 1972, § 29-1-69]. Huber v. Freret, 138 Miss. 238, 103 So. 3, 1925 Miss. LEXIS 44 (Miss. 1925).

2. Notice.

Statutory provisions requiring that the state give notice to a patentee or his vendee, informing him of his preferential right to purchase, before issuing a patent to any other person of lands previously "patented" or "attempted to be patented" conferred upon the patentee or his vendee a personal right to preference in the purchase of the land in the earlier patent, created a preferential right to be exercised or not at the option of the person in whom it was vested, and were not intended to void patents previously issued which were, in fact, valid, but were directed toward the accomplishment of an opposite result. State v. Stockett, 249 So. 2d 388, 1971 Miss. LEXIS 1162 (Miss. 1971).

Under statutes relating to lands to be managed and disposed of through State Land Office and authorizing Land Commissioner to issue patents to lands sold in the City of Jackson, and providing for notice by registered mail to be given to prior purchaser, notice must be given to original purchaser or his vendee before the lands are available for sale, and there can be no valid sale without such notice. Easterling v. Howie, 179 Miss. 680, 176 So. 585, 1937 Miss. LEXIS 65 (Miss. 1937).

3. Pleading.

Where complaint in suit to confirm title to land under patent from State issued to plaintiff in 1936 alleged that prior patent was issued to another in 1926, and failed to allege that original buyer was given notice of the sale or that original buyer did not obtain lands in good faith or that price was unfair and unreasonable, complaint was demurrable. Easterling v. Howie, 179 Miss. 680, 176 So. 585, 1937 Miss. LEXIS 65 (Miss. 1937).

§ 29-1-71. Sale of lands for municipal defense projects.

When it is sufficiently shown to the Governor and Secretary of State that any tax-forfeited or escheated lands owned by the state, whether within or without the corporate limits of any municipality if located within ten (10) miles thereof, are needed by any municipality in connection with any national defense project which such municipality is sponsoring, the Secretary of State with the approval of the Governor is hereby authorized to sell on an acreage basis any such lands so owned by the state to any municipality, without limit as to quantity or manner in which such land is subdivided, for such price as the Secretary of State with the approval of the Governor may fix. Provided, however, that the minimum price for such land shall be One Dollar ($1.00) per acre. The conveyance of such lands by the state shall be by patent executed by the Secretary of State under the seal of the land office, which patent shall contain all of the lands sold, and such patent shall convey to the municipality a fee simple title to the lands therein described.

In the event the price for which such land is sold is not sufficient to pay the fees and costs allowed to the county tax collector and chancery clerk, as in cases of the redemption of lands for tax sales, under the provisions of Section 25-7-21, Mississippi Code of 1972, the Secretary of State shall apportion the purchase money derived from the sale of such lands hereunder between the county tax collector and chancery clerk upon the basis of the amount of fees due each of them, and the sum thus allotted shall be paid in the manner provided in Section 29-1-95, Mississippi Code of 1972, and shall be in full settlement of all fees due such officers.

Municipalities buying lands hereunder shall not be required to file the application required by Section 29-1-37, Mississippi Code of 1972, and such application as the municipality may file to purchase land hereunder may be promptly acted upon by the Governor and Secretary of State.

HISTORY: Codes, 1942, § 4126; Laws, 1942, ch. 171; Laws, 1990, ch. 420, § 1, eff from and after July 1, 1990.

§ 29-1-73. Quantity purchased by one person.

One person may purchase or contract to purchase as much as one-quarter (¼) section of the public lands in one year, and no more (except Lowry Island lands, which are not to be limited as to amount purchased); and all lands acquired, directly or indirectly, by any person in contravention of this chapter shall escheat to the state, and all moneys and fees paid therefor shall be forfeited.

The restrictions herein contained limiting to one-quarter (¼) section the quantity of land which may be purchased by any person in one (1) year shall not apply in any manner to the original owner or mortgagee of state forfeited tax lands at the time title matured in the state, nor to his heirs, executors, or administrators; nor shall such restriction apply to the board of drainage commissioners of any drainage district in the purchase of lands situated in such drainage district, as provided in Section 51-33-45, nor to the United States government in the purchase of lands under the provisions of Section 3-5-11, or under the provisions of other laws authorizing the sale of such lands to the United States government.

HISTORY: Codes, 1892, § 2564; 1906, § 2902; Hemingway's 1917, § 5237; 1930, § 6026; 1942, §§ 4088, 4108; Laws, 1936, ch. 174; Laws, 1942, ch. 235.

Cross References — Limitation to one-quarter section of quantity of land to be embraced in any one patent or contract, see § 29-1-81.

Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

Escheats generally, see §§ 89-11-1 et seq.

JUDICIAL DECISIONS

1. In general.

Only state can raise question of invalidity of patent from state on ground that person obtaining patent had obtained in excess of 160 acres of land from state in one year, or that he has paid to state inadequate consideration for land obtained; and these questions cannot be raised by original owners of land in question. Perkins v. White, 208 Miss. 157, 43 So. 2d 897, 1950 Miss. LEXIS 237 (Miss. 1950).

Good faith of bank in acquiring, pursuant to settlement of debt, 340 acres of land from vendee of patentees from state after tax sale thereof to state, would be presumed in view of provisions of banking law entitling a bank to own such real estate as should be purchased by or conveyed to the bank in satisfaction of or on account of debts previously contracted in the course of its business. Merchants & Mfgs. Bank v. State, 200 Miss. 291, 25 So. 2d 585, 1946 Miss. LEXIS 293 (Miss. 1946).

Bank purchasing 340 acres of land from vendee of patentees from state after tax sale thereof to state, apparently in attempt to collect debt due it from such vendee, was not subject to forfeiture to the state of all moneys, fees, and costs paid by it in connection with the issuance of the patents, where, because of the invalidity of the tax sale to the state, state had no title to the land which the bank could acquire from the state, directly or indirectly, fraudulently or otherwise. Merchants & Mfgs. Bank v. State, 200 Miss. 291, 25 So. 2d 585, 1946 Miss. LEXIS 293 (Miss. 1946).

As to statute (Code 1942, § 1317) providing for suit against the state to confirm title requiring the court to validate and perfect title based upon tax forfeited land patents unless the patent was obtained by "actual fraud on the part of the patentee, or his representative," construction of the quoted phrase to mean such fraud in the procurement of the patent as the making of false statements to or intentionally withholding important information from, the state land commissioner as to material facts in regard to which the applicant is required to make a disclosure under oath, and which false representations were either known to be false, or were made in reckless disregard of whether the same were true or false, was not unconstitutional as suspending the operation of this section [Code 1942, § 4088]. State v. Roell, 192 Miss. 873, 7 So. 2d 867, 1942 Miss. LEXIS 70 (Miss. 1942).

Word "enter" in Laws 1877 ch. 15, § 3, relating to the sale of swamp and overflowed lands by the state, and "purchase" in this section [Code 1942, § 4108] are convertible terms, and "escheat" as used in this section [Code 1942, § 4108] would be written into laws of 1877 by the law. Wisconsin Lumber Co. v. State, 97 Miss. 571, 54 So. 247, 1910 Miss. LEXIS 317 (Miss. 1910).

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Lands § 66.

CJS.
73A C.J.S., Public Lands § 252.

§ 29-1-75. Who may not purchase public lands [Repealed effective July 1, 2022].

(1) Except as otherwise provided in this section, neither a corporation nor a nonresident alien, nor any association of persons composed in whole or in part of nonresident aliens, shall directly or indirectly purchase or become the owner of any of the public lands; and every patent issued in contravention hereof shall be void.

(2)(a) A banking corporation owning such tax-forfeited lands or holding a mortgage or deed of trust thereon at the time of the sale to the state, and whose mortgage or deed of trust is still in force and effect, may purchase such lands, regardless of acreage, owned by it as aforesaid or on which it held a mortgage or deed of trust. In event of a purchase by such corporation as a mortgagee, such lands shall be held for the benefit of the mortgagor subject to all the terms and conditions of the mortgage or deed of trust held by the purchasing banking corporation and, upon payment of the debt secured by such mortgage or deed of trust, together with interest and incidents, such banking corporation shall in that event reconvey such lands to the original mortgagor, his heirs or assigns.

(b) Any other nonbanking corporation may purchase lands sold or forfeited to the state for delinquent taxes under any section of Chapter 1, Title 29, specifically relating to the sale of such tax-forfeited lands by the Secretary of State. A nonbanking corporation purchasing land sold or forfeited to the state shall be subject to the acreage limitations of Section 29-1-73.

(c) Nonresident aliens may acquire and hold not to exceed three hundred twenty (320) acres of public lands in this state for the purpose of industrial development thereon. In addition, any nonresident alien may acquire and hold not to exceed five (5) acres of public lands for residential purposes. If any land acquired by a nonresident alien for the purpose of industrial development ceases to be used for industrial development, it shall escheat to the public body that sold such land to the nonresident alien.

(3) This section shall stand repealed on July 1, 2022.

HISTORY: Codes, 1892, § 2563; 1906, § 2901; Hemingway's 1917, § 5236; 1930, § 6027; 1942, § 4109; Laws, 1938, Ex. ch. 79; Laws, 1988, ch. 439, § 1; Laws, 2014, ch. 453, § 1; Laws, 2016, ch. 414, § 3, eff from and after July 1, 2016; Laws, 2019, ch. 331, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment extended the date of the repealer for the section by substituting "July 1, 2022" for "July 1, 2019" in (3).

Cross References — Constitutional authority to limit or restrict acquiring or holding of land by nonresident aliens or corporations, see Miss. Const. Art. 4, § 84.

Constitutional prohibition against selling state land to corporations for price less than that asked of individuals, see Miss. Const. Art. 4, § 95.

Real estate holdings of domestic insurance companies, see § 83-19-55.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Constitutionality of section.
3. Fraudulent purchases.
4. Effect of statute of limitations.
5. Challenge to validity of land patents

1. In general.

It was not the intention of the legislature that Code 1942, § 1317 would in any way affect this section [Code 1942, § 4109]. State v. Magnolia Bank, 212 Miss. 47, 53 So. 2d 79, 1951 Miss. LEXIS 426 (Miss. 1951).

In order for a bank to obtain a valid tax forfeited land patent it must appear that the bank owned the tax forfeited land or held a mortgage or deed of trust thereon at the time of sale, or, if holding a mortgage or a deed of trust thereon, that such mortgage or deed of trust was still in force and effect at the time of the application to purchase. State v. Magnolia Bank, 212 Miss. 47, 53 So. 2d 79, 1951 Miss. LEXIS 426 (Miss. 1951).

The fact that there was no fraud in the procurement of a land patent had no effect where the bank was not eligible and without authority to purchase land from the state unless it held a mortgage or deed of trust on the land which was in force and effect at the time of the application. State v. Magnolia Bank, 212 Miss. 47, 53 So. 2d 79, 1951 Miss. LEXIS 426 (Miss. 1951).

This section [Code 1942, § 4109] does not provide for a forfeiture for violation of the provisions hereof, but merely prohibits a corporation from purchasing or becoming the owner of any of the public lands, except under the conditions herein enumerated. Merchants & Mfgs. Bank v. State, 200 Miss. 291, 25 So. 2d 585, 1946 Miss. LEXIS 293 (Miss. 1946).

This section [Code 1942, § 4109] is inapplicable to a bank, purchasing 340 acres of land from vendee of patentees from state after tax sale thereof to state, so as to subject it to forfeiture of all moneys, fees and costs paid by it in connection with the issuance of the patents, since this section [Code 1942, § 4109] does not provide for forfeiture but merely prohibits a corporation from purchasing or becoming the owner of any public lands except under the conditions herein enumerated. Merchants & Mfgs. Bank v. State, 200 Miss. 291, 25 So. 2d 585, 1946 Miss. LEXIS 293 (Miss. 1946).

The operation of this section [Code 1942, § 4109] was not suspended or affected by construing a statute (Code 1942, § 1315), providing for suit against the state to confirm title and requiring the court to validate and perfect title based upon tax forfeited land patents unless the patent was obtained by "actual fraud on the part of the patentee, or his representative," to mean such fraud in the procurement of the patent as the making of false statements to or intentionally withholding important information from, the state land commissioner as to material facts in regard to which the applicant is required to make a disclosure under oath, and which false representations were either known to be false, or were made in reckless disregard of whether the same were true or false. State v. Roell, 192 Miss. 873, 7 So. 2d 867, 1942 Miss. LEXIS 70 (Miss. 1942).

2. Constitutionality of section.

This statute [Code 1942, § 4109] does not violate the Fourteenth Amendment to the United States Constitution in granting privileges to banking corporations not granted to all corporations, since banking corporations are in a class by themselves and the statute treats all banking corporations in the state alike. State v. Bellinger, 202 Miss. 675, 32 So. 2d 286, 1947 Miss. LEXIS 330 (Miss. 1947).

The fact that building and loan associations and insurance companies sustain somewhat similar relations to state policy, and also have some like functions and powers themselves, does not integrate them into the same classification with banks, so as to form the basis for a claimed discrimination against them by this section [Code 1942, § 4109]. State v. Bellinger, 202 Miss. 675, 32 So. 2d 286, 1947 Miss. LEXIS 330 (Miss. 1947).

3. Fraudulent purchases.

Good faith of bank in acquiring, pursuant to settlement of debt, 340 acres of land from vendee of patentees from state after tax sale thereof to state, would be presumed in view of provisions of banking law entitling a bank to own such real estate as should be purchased by or conveyed to the bank in satisfaction of or on account of debts previously contracted in the course of its business. Merchants & Mfgs. Bank v. State, 200 Miss. 291, 25 So. 2d 585, 1946 Miss. LEXIS 293 (Miss. 1946).

An indictment charging defendant with defrauding and conspiring to defraud the state out of the title to tax forfeited public lands by illegally purchasing them for a corporation whose sole business was not of cutting and marketing lumber, did not charge an offense under Code 1930, § 833 (Code 1942, § 2059), but the allegations thereof were sufficient to be embraced in Code 1930, § 830 subsection 7 (Code 1942, § 2056), the word "feloniously" being mere surplusage; and the defendants were triable as for a misdemeanor. State v. Russell, 185 Miss. 13, 187 So. 540, 1939 Miss. LEXIS 144 (Miss. 1939).

4. Effect of statute of limitations.

The rule that even where the debt secured by a mortgage is barred by the statute of limitations, the mortgagee cannot be deprived of possession by the mortgagor until the debt is paid does not apply in an action by a bank against the state to quiet title where the rights of the bank under a deed of trust were barred by the statute of limitations at the time the bank acquired a tax forfeited land patent and the patent was void. State v. Magnolia Bank, 212 Miss. 47, 53 So. 2d 79, 1951 Miss. LEXIS 426 (Miss. 1951).

Where in 1931 a deed of trust on certain land was issued to a bank as security for a loan, and later that land was sold at a tax sale and not redeemed, in 1939 the bank's remedy at law to recover the debt was barred by statute of limitations and direct remedy in equity was likewise barred. State v. Magnolia Bank, 212 Miss. 47, 53 So. 2d 79, 1951 Miss. LEXIS 426 (Miss. 1951).

In an action by a bank against the state to quiet title where the rights and remedies of the bank under a deed of trust were barred by the statute of limitations at the time the bank acquired a tax forfeited land patent and where the patent was void, the absence of a specific plea of statute of limitations was not defective and the bank was not entitled to quiet title. State v. Magnolia Bank, 212 Miss. 47, 53 So. 2d 79, 1951 Miss. LEXIS 426 (Miss. 1951).

5. Challenge to validity of land patents

In a case in which appellant forfeited property to the State for failure to pay taxes, the chancellor erred in ruling that appellant lacked any standing to challenge the validity of the land patents because, if the land patents issued to appellee companies were void by operation of this statute - which prohibited a banking corporation that did not hold a mortgage or deed of trust on the property at the time it was forfeited to the State from directly or indirectly purchasing or becoming the owner of public land - then appellee companies did not own the property; and they could not prevent appellant from enforcing the protective covenants or divest appellant of title to common-area property within the development. Green Hills Dev. Co., LLC v. Sec'y of State, 275 So. 3d 1077, 2019 Miss. LEXIS 254 (Miss. 2019).

In a case in which appellant forfeited property to the State for failure to pay taxes, whether the bank, as trustee for the bondholders, could indirectly purchase the property through the companies was a material disputed fact; thus, summary judgment was improperly granted to the Secretary of State, the bank, and the companies on the issue of the validity of the land patents. Green Hills Dev. Co., LLC v. Sec'y of State, 275 So. 3d 1077, 2019 Miss. LEXIS 254 (Miss. 2019).

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Lands §§ 64 et seq.

§ 29-1-77. Sale or lease to highway commission.

The land commissioner with the approval of the Governor is hereby authorized to sell, lease, or donate to the State Highway Commission or to any county or counties or the Natchez Trace Commission, for right of way purposes or for road material used or useful in the construction or maintenance of state, federal, and county highways, any of the public lands of the state, regardless of the quantity of said lands.

HISTORY: Codes, 1942, § 4092; Laws, 1936, ch. 174.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — Use of certificates issued in lieu of refund of erroneously levied drainage district taxes to purchase state lands, see §§ 51-29-85, 51-29-87.

Authority of Mississippi Transportation Commission to convey land to United States government for road purposes, see § 55-5-7.

§ 29-1-79. How purchase money paid.

The Secretary of State shall receive the purchase money of lands, which purchase money shall be paid into the Treasury. In the event a patent has not been finally completed within thirty (30) days after purchase money has been paid to the Secretary of State, then, upon written request to the Secretary of State by the party making the application to purchase state land, there shall be refunded all money, less fees provided under this chapter, paid upon the application to purchase state land. The Secretary of State shall issue a warrant upon the State Treasurer for the sum of money to be refunded; the warrant shall be paid as all other warrants are paid. The application upon which any money is refunded shall be void, and no patent shall be granted thereon.

HISTORY: Codes, 1892, § 2582; 1906, § 2921; Hemingway's 1917, § 5256; 1930, § 6041; 1942, §§ 4089, 4138; Laws, 1936, ch. 174; Laws, 1940, ch. 212; Laws, 2015, ch. 305, § 1, eff from and after July 1, 2015.

§ 29-1-81. Issuance of patents and contracts.

(1) All conveyances of land by the state in fee shall be by patent issued from the Secretary of State's office; every patent issued shall be under the great seal, signed by the Secretary of State.

(2)(a) The patent shall be issued by the Office of the Secretary of State and delivered to the patentee. A copy thereof shall be retained by the Secretary of State among the records of his office.

(b) The Secretary of State may file the original patent with the chancery clerk and such filing shall constitute the delivery of the patent to the patentee. Prior to filing the original patent, the Secretary of State shall collect from the patentee a fee in an amount equal to the fee provided for in Section 25-7-9(1)(b) to cover the cost of filing the patent. Failure of the Secretary of State to file the patent shall not affect its validity.

(3) All contracts of sale of public lands shall be issued from the Secretary of State's office in duplicate; and every contract issued shall be under the great seal, signed by the Secretary of State and countersigned by the Governor.

(4) No more than one-quarter (1/4) section of land shall be embraced in the same patent or contract, except as otherwise provided by law.

HISTORY: Codes, 1892, § 2561; 1906, § 2899; Hemingway's 1917, § 5234; 1930, § 6024; 1942, § 4106; Laws, 1936, ch. 174; Laws, 1942, ch. 235; Laws, 1978, ch. 458, § 22; Laws, 1990, ch. 420, § 2; Laws, 2003, ch. 331, § 2; Laws, 2016, ch. 414, § 4, eff from and after July 1, 2016; Laws, 2020, ch. 358, § 1, eff from and after passage (approved June 25, 2020).

Amendment Notes — The 2020 amendment, effective June 25, 2020, in (2), substituted "a fee in an amount equal to the fee provided for in Section 25-7-9(2)(b)" for "the sum of Twenty Dollars ($20.00)."

Cross References — Limitation on amount of land which may be purchased by one person, see § 29-1-73.

Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

Recording of patents, see § 89-5-11.

OPINIONS OF THE ATTORNEY GENERAL

Consistent with Section 13-3-187, State should execute conveyance of property deeded to state as result of civil prosecution pursuant to Racketeer Influenced and Corrupt Organizations Act by patent, as authorized by Section 29-1-81, upon payment of purchase money. Nelson, March 23, 1994, A.G. Op. #94-0059.

A patent issued by the state pursuant to this section is void if the patent is not filed for recording with the chancery clerk of the county in which the land is situated within six months of the date of issuance thereof; further, the filing of a patent with a chancery clerk within six months of the date of its issuance, but not in a county where the land is situated, does not satisfy the requirements of this section and does not prevent the patent from becoming void. McWhorter, May 21, 1999, A.G. Op. #99-0236.

Filing a patent within six months of its issuance but in the wrong county has no effect upon the validity of the patent. McWhorter, May 21, 1999, A.G. Op. #99-0236.

A chancery clerk may not collect back taxes on parcels that have been issued a land patent by the state as the back taxes were extinguished when the property was sold or struck off to the state. Peacock, Sept. 3, 2004, A.G. Op. 04-0299.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Lands §§ 48 et seq.

CJS.
73A C.J.S., Public Lands § 202.

§ 29-1-83. Land sold by the state to be assessed for taxes.

When a patent shall issue for public lands, the land commissioner shall notify the clerk of the chancery court and the tax assessor of the county in which it is situated of the fact, giving the name of the patentee, a description of the land, and the price per acre. Said land shall, after January 1st of the next year after issuance of patents, be assessed for taxes as other lands are.

HISTORY: Codes, 1892, § 2573; 1906, § 2911; Hemingway's 1917, § 5246; 1930, § 6025; 1942, § 4107; Laws, 1942, ch. 235.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Liability of lands conveyed to drainage district or municipality for state and county taxes, see §§ 21-33-71, 51-29-81, 51-33-47.

Purchases by municipalities at state tax sales, see § 21-33-73.

Transmission of list of lands on which patents have issued to county assessors, see § 27-35-65.

Lands under contract for sale taxable, see § 29-1-43.

Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

OPINIONS OF THE ATTORNEY GENERAL

After January 1 of the year following issuance of a patent, this section requires a tax assessor to assess the property conveyed by the patent regardless of whether the original patent has been recorded. McWhorter, May 21, 1999, A.G. Op. #99-0236

A chancery clerk may not collect back taxes on parcels that have been issued a land patent by the state as the back taxes were extinguished when the property was sold or struck off to the state. Peacock, Sept. 3, 2004, A.G. Op. 04-0299.

§ 29-1-85. Failure of title to public lands.

If the title to any public land sold by the state through the State Fiscal

Officer or Secretary of State or by any municipality, except land forfeited to the state for the nonpayment of ad valorem taxes, shall fail, or shall have failed, the state or the municipality, as the case may be, shall refund the purchase-money to its vendee or his heirs or assigns; and if no profits have been received from the lands, then all taxes shall be returned also, and all fees paid, with interest at six percent (6%) per annum. Except as provided in this chapter, the question of failure of title can only be determined in a suit filed in the county in which the land is situated, and the Secretary of State or the municipality, as the case may be, shall be made a party to the suit. Where the failure of title shall have been caused by the cancellation of a contract or a patent issued by the state, or a deed from the municipality, under the requirements of any law or decree of a chancery court of this state, directing cancellation in favor of prior purchasers, or through the failure of the state's title, or the title of the municipality, as the case may be, where the failure shall have been caused by the striking of the land from the state land rolls under the requirements of any law of this state, the failure of title so caused shall not be required to be determined by decree of court.

HISTORY: Codes, 1892, § 2588; 1906, § 2927; Hemingway's 1917, § 5262; 1930, § 6045; 1942, §§ 4134, 4142; Laws, 1900, ch. 65; Laws, 1942, ch. 235; Laws, 1948, ch. 494, § 1; Laws, 2018, ch. 309, § 2, eff from and after passage (approved March 5, 2018).

Cross References — Redemption of lands sold for taxes by mistake, see § 27-45-13.

Lands acquired by the state through error, see § 29-1-25.

Void tax sales, see § 29-1-31.

Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

JUDICIAL DECISIONS

1. In general.

Where tax sale of land to state is void, it is immaterial in suit to cancel forfeited land tax patent as cloud on title that patent was obtained from the state in good faith for a fair price. Ellard v. Logan, 39 So. 2d 485 (Miss. 1949).

Judgment of circuit court in ejectment by patentee and grantee of other land patented by the state, in favor of parties in possession, affirmed on appeal for failure to perfect bill of exceptions, did not constitute res judicata in suit against state for the purchase money. Brown v. Creegan, 105 Miss. 146, 62 So. 11 (Miss. 1913).

One claiming under the holder of a certificate of purchase from the treasurer of the "Swamp Land Commissioners" who subsequently buys the land from the state by mistake is not entitled under this section [Code 1942, § 4142], or Code 1906, §§ 2916, 2947, to have the money used in the subsequent purchase refunded, there being no statute authorizing the same. See ch 73 laws 1894; ch 46 laws of 1896, and amended by ch 65 laws 1900, and ch 76 laws 1900, as amended by ch 74 laws 1902. Cohn v. Pearl River Lumber Co., 80 Miss. 649, 32 So. 292, 1902 Miss. LEXIS 311 (Miss. 1902).

This section [Code 1942, § 4142] as embodied in Code 1892, § 2588 as amended by the laws of 1896, p 60 (Code 1906, §§ 2927, 2928), applied only to sales made by the land commissioner after November 1, 1892. Holder v. Wineman, 76 Miss. 824, 25 So. 481, 1899 Miss. LEXIS 5 (Miss. 1899).

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Lands §§ 52, 137.

§ 29-1-87. Patents cancelled where state has no title; refund to purchasers for cancelled patents; determination of failure of title.

(1) If the State of Mississippi, through the State Fiscal Officer or Secretary of State's office, has heretofore issued or shall hereafter issue a patent or patents for any lands to which the state holds no title, or which did not belong to it at the time of the issuance of the patent or patents, or any part of which land may have caved into the river before the issuance of the patent or patents, or by oversight or otherwise two (2) patents may have been or may hereafter be issued therefor, the Secretary of State shall investigate the case and report to the Attorney General, who, if he shall find the lands so patented did not belong to the state, shall so report to the Secretary of State. If the Secretary of State shall find that such lands or any part thereof had caved into the river before the issuance of the patent, or that the patentee did not acquire any land or title under the patent, he shall mark the patent or patents or, in case of the loss of the original, a certified copy of the patents, "cancelled," and refund the purchaser the amount paid to and retained by the state for the cancelled patent or patents, if any. The Secretary of State shall certify all cancellations to the clerk of the chancery court of the county in which the patents have been recorded, and the clerk shall thereupon cancel the record of it. That part of the purchase price paid to local governmental entities by the Secretary of State shall be refunded to the purchaser of the lands by the local governmental entities that received the funds. Any fees paid to the local governmental entities shall be refunded to the purchaser by the recipient of the fees. When only a part of the purchase-money is refunded, it shall be first noted by the Secretary of State in ink across the face of the patent and then noted by the chancery clerk upon the record of patent, cancelling it in that proportion only.

(2) Except as provided in this chapter, the question of failure of title can only be determined in a suit filed in the county in which the land is situated, and the Secretary of State or municipality, as the case may be, shall be made a party to the suit. Where the failure of title shall have been caused by the cancellation of a contract or a patent issued by the state under the requirements of any law or decree of a chancery court of this state directing cancellation in favor of prior purchasers, or through the failure of the state's title, as the case may be, where the failure shall have been caused by the striking of the land from the state land rolls under the requirements of any law of this state, the failure of title so caused shall not be required to be determined by decree of court.

HISTORY: Codes, 1906, § 2947; Hemingway's 1917, § 5282; 1930, § 6046; 1942,

§ 4143; Laws, 1904, p. 183; Laws, 1942, ch. 235; Laws, 2018, ch. 309, § 3, eff from and after passage (approved March 5, 2018).

Cross References — Lands acquired through error, see § 29-1-25.

Lands mistakenly claimed by state stricken from tax list, see § 29-1-27.

Lands mistakenly sold to state may be stricken, see § 29-1-29.

Void tax sales stricken, see § 29-1-31.

Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

JUDICIAL DECISIONS

1. In general.

In a case where a forfeited tax patent was set aside due to a conveyance of homestead property by a husband without a wife's permission, a purchaser was not allowed to recover the amount paid for the property at a tax sale; the purchaser did not raise an issue under Miss. Code Ann. § 29-1-87 before the trial court. Alexander v. Daniel, 904 So. 2d 172, 2005 Miss. LEXIS 370 (Miss. 2005).

Statute of limitations does not begin to run against right of patentee to a refund of the price of land to which the state did not have title until the land commissioner cancels the patent and presents it to the auditor. Wilson v. Naylor, 116 Miss. 573, 77 So. 606, 1917 Miss. LEXIS 346 (Miss. 1917).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 52, 122, 137.

§ 29-1-89. Certain entries cancelled.

If it appear to the land commissioner that any land has been sold and patented to several parties, he shall report the facts to the legislature, with information of the amount of purchase-money to be refunded, and ask for an appropriation therefor if, in his opinion, the state had received and ought to refund anything.

HISTORY: Codes, 1892, § 2585; 1906, § 2924; Hemingway's 1917, § 5259; 1930, § 6048; 1942, § 4146.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the secretary of state.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 52, 137.

CJS.

73A C.J.S., Public Lands §§ 268 et seq.

§ 29-1-91. Taxes remain a charge on redeemed land.

If the state's title to any land certified into the land office fail, and the land be reclaimed or redeemed before or after sale by the state, the taxes for which it was sold and the taxes for each subsequent year and all officers' fees shall remain and become a charge upon the land as if it had been regularly assessed to the owner in each of said years.

If the title to any land purchased by any municipality under any provisions of Sections 21-33-69, 21-33-73, or 21-37-49 shall fail, and the land be reclaimed before or after any sale by the municipality, the municipal, municipal separate school, and/or special improvement or other taxes for which it was sold, and any and all of such taxes for any subsequent year, and all officers' fees shall remain and become a charge upon such land, subordinate only to state and county taxes, as if it had been regularly assessed to the owner in each of said years.

HISTORY: Codes, 1892, § 3869; 1906, § 4376; Hemingway's 1917, § 7015; 1930, § 6043; 1942, § 4140; Laws, 1948, ch. 494, § 2.

Cross References — Reconveyance of lands acquired by error, see § 29-1-25.

Striking lands acquired under void tax sales from lists of lands held by state for nonpayment of taxes, see § 29-1-31.

§ 29-1-93. Fees of county officers.

The fees of all county officers allowed by law in connection with land sold to the state for taxes shall be paid by the state when such land shall be sold by the state. Upon such sale the land commissioner shall carefully calculate said fees and shall certify the same to the auditor who, if he finds the same correct, shall issue his warrants therefor to the proper persons; provided, that said fees shall lapse as to any land not sold within ten (10) years after the period of redemption has expired.

HISTORY: Codes, 1892, § 3868; 1906, § 4375; Hemingway's 1917, § 7014; 1930, § 6042; 1942, § 4139; Laws, 1940, ch. 130.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Fees of sheriffs and tax collectors in connection with lands sold for taxes, see §§ 25-7-19, 25-7-21.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Mandamus.

1. In general.

With respect to provisions that State Auditor should issue warrants for fees of county officers in connection with lands sold to State for taxes if Auditor found fees as calculated by Land Commissioner correct, "correct" referred to both facts and law, and Auditor was required to refuse to issue warrants both if calculation was wrong and if calculation was correct but claim was unauthorized by law. Thomas v. Price, 171 Miss. 450, 158 So. 206, 1934 Miss. LEXIS 284 (Miss. 1934).

2. Mandamus.

A plea of abatement to a mandamus action brought by the executrix of a deceased chancery clerk against the state auditor to compel him to issue a warrant for fees due the plaintiff decedent under this section [Code 1942, § 4139], in connection with land sold to the state for taxes, was wrongfully sustained on the ground that there was already pending in chancery court a suit by the state tax collector against such executrix, the deceased chancery clerk's surety, the state treasurer and state auditor, to recover sums due the state from such deceased chancery clerk and to enjoin the state auditor from issuing a warrant for the alleged fees due such clerk, since the record of the pleadings in the chancery suit wherein the executrix was defendant disclosed that she was there only resisting the suit of the tax collector, and that a decree therein for her would result only in the dismissal of the bill of complaint against her and the other defendants therein, including the state auditor and state treasurer, and as against the auditor and treasurer her right vel non to the fees in question would be undetermined, and in the event the auditor should decline to issue a warrant to the executrix therefor, another mandamus proceeding against him would be necessary. Hutchens v. Craig, 189 Miss. 772, 198 So. 736, 1940 Miss. LEXIS 160 (Miss. 1940).

State Auditor has discretion and judgment in connection with payment of fees due county officers on land sold for taxes, so that county officer is not entitled to mandamus to compel Auditor to issue warrant without first bringing suit. Thomas v. Price, 171 Miss. 450, 158 So. 206, 1934 Miss. LEXIS 284 (Miss. 1934).

§ 29-1-95. County, municipality, public school district, drainage district and levee board taxes; funding of agency expenses; deposit of monies into State General Fund and use of monies so deposited.

(1) All taxes due the county, municipality, public school district, drainage district or levee board on lands sold to the state for taxes and listed into the Secretary of State's office shall remain in abeyance until the land be sold, and thereafter such taxes shall be paid out of the purchase money; but state, county, municipality, public school district, drainage district or levee board taxes shall not accrue on such lands after the fiscal year in which it was certified to the state. Upon the payment of the purchase money of any tax land into the Treasury, the Secretary of State shall certify to the Department of Finance and Administration and to the Treasurer the amount of fees and costs allowed to the county tax collector and chancery clerk, as in cases of the redemption of lands from tax sales, under the provisions of Section 25-7-21; and the Department of Finance and Administration shall issue warrants in favor of such county tax collector and chancery clerk for the amount of such

fees. The Secretary of State shall also certify to the Department of Finance and Administration and the Treasurer the amount of the county, municipality, public school district, drainage district and levee board taxes for which said land was sold to the state, and all taxes accruing on said land until the year in which it was certified to the state; and the Department of Finance and Administration shall issue warrants in favor of the proper county, municipality, public school district, drainage district, and levee board for the said four (4) years' taxes. The balance of the purchase money shall be deposited into a special fund to be known as the "Land Records Maintenance Fund," that is hereby created in the State Treasury. The fund shall be administered by the Secretary of State. Any amount on hand in said Land Records Maintenance Fund at the end of the fiscal year that is not necessary to pay any obligations to local governmental units set out in this subsection shall, after June 30 of each year, be transferred to the General Fund, and shall not be authorized for expenditure by the Secretary of State to reimburse or otherwise defray the expenses of any office administered by the Secretary of State.

(2) If, after the payment of the fees and costs allowed to the county tax collector and the chancery clerk, as aforesaid, the balance of the purchase money of any tax land paid into the Treasury shall be insufficient to cover the amount of the state, county, municipality, public school district, drainage district or levee board taxes due thereon, or if the records of the Secretary of State fail to show the amount of state, county, municipality, public school district, drainage district or levee board taxes accruing for the years until said land was certified to the state, on lands sold by the Secretary of State, he shall apportion the balance of the purchase money derived from the sale of such lands between the state, county, municipality, public school district, drainage district and levee board upon the basis of the amount of taxes due the state, county, municipality, public school district, drainage district and levee board, respectively, at the time said land was struck off to the state for delinquent taxes by the sheriff and tax collector, and for which said lands were struck off to the state.

(3) All funds derived from the sale of properties under the provisions of Sections 7-11-15, 29-1-27, 29-1-29, 29-1-35, 29-1-37, 29-1-53 through 29-1-57, 29-1-73 and 29-1-81 through 29-1-87 shall be handled in the manner provided herein for funds derived from the sale of lands.

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law. The requirements of this subsection (4) shall not apply to disbursements made to local governmental units from the Land Records Maintenance Fund, and to any funds which by law are to be collected and deposited to the Land Records Maintenance Fund.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section. This prohibition shall not apply to payments made from the Land Records Maintenance Fund provided for in subsection (1) of this section.

HISTORY: Codes, 1892, § 3867; 1906, § 4374; Hemingway's 1917, § 7013; 1930, § 6044; 1942, § 4141; Laws, 1936, ch. 174; Laws, 1942, ch. 237; Laws, 1988, ch. 348; Laws, 1990, ch. 574, § 1; Laws, 1993, ch. 358, § 1; Laws, 2016, ch. 459, § 47; Laws, 2017, 1st Ex Sess, ch. 7, § 17, eff from and after passage (approved June 23, 2017).

Editor's Notes — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References — Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

JUDICIAL DECISIONS

1. In general.

Where land is sold to the state for taxes, county and levee district taxes remain in abeyance until redemption or sale by state. Carrier Lumber & Mfg. Co. v. Quitman County, 156 Miss. 396, 124 So. 437, 125 So. 416, 1929 Miss. LEXIS 364 (Miss. 1929).

§ 29-1-97. Lien of drainage district or municipality not abated.

When any land is situated in a drainage district and is subject to any special drainage district assessment which is secured by a lien on said land, such lien shall not be abated or cancelled on account of the sale of such land to the state for delinquent taxes, but such lien shall be held in abeyance during the period the property is owned by the state and, immediately upon the title to the land passing from the state by virtue of a sale, such lien shall again become effective. And, likewise, when any land is situated in a municipality and is subject to any special municipal benefit assessment which is secured by a lien on the land, such lien shall not be abated or cancelled on account of the sale of such land to the state for delinquent taxes, but such lien shall be held in abeyance during the period such property is owned by the state and, immediately upon the title to the state passing from the state by virtue of a sale, such lien shall again become effective.

HISTORY: Codes, 1942, § 4090; Laws, 1936, ch. 174.

Cross References — Municipal special assessments as liens, see § 21-41-21.

Sale of lands for unpaid drainage district taxes, see § 51-29-81.

Provision that drainage district assessment shall be lien, see § 51-31-53.

JUDICIAL DECISIONS

1. In general.

Code 1942, § 9697, exempting from taxation property belonging to the state or to any county, levee board or municipal corporation thereof, was never intended to abate an existing judgment lien as fixed by final decree of the chancery court against land subsequently purchased by the state or one of its subdivisions. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498, 1950 Miss. LEXIS 449 (Miss. 1950).

A county, on becoming a voluntary purchaser of drainage district lands encumbered by a statutory judgment for assessments, does not acquire such lands free of the lien despite the fact that the lands are to be used for a public purpose. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498, 1950 Miss. LEXIS 449 (Miss. 1950).

This section [Code 1942, § 4090] is designed for the protection of the drainage district and to prevent impairment of its contract with bondholders who may have supplied funds for draining and improvement of lands against which the lien attaches. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498, 1950 Miss. LEXIS 449 (Miss. 1950).

A statute providing for continuance of special municipal benefit assessment lien after sale of land subject to lien to the State and resale is within power of legislature, which has entire control of sale of State lands. City of Biloxi v. Lowery, 179 Miss. 364, 175 So. 200, 1937 Miss. LEXIS 35 (Miss. 1937).

Provision of this seciton [Code 1942, § 4090] that the Act should not affect claim or right arising prior to adoption of the Act did not make the Act inapplicable to resale by State, after adoption of the Act, of land purchased prior thereto, since only right or claim affected was that of State, which was benefited by continuance of lien of its governmental agency. City of Jackson v. Howie, 179 Miss. 251, 175 So. 198, 1937 Miss. LEXIS 34 (Miss. 1937).

Provision herein for continuance of special municipal benefit assessment lien after sale of land subject to lien to the State and resale would apply to resale, after statute's adoption, of land purchased by State prior thereto. City of Jackson v. Howie, 179 Miss. 251, 175 So. 198, 1937 Miss. LEXIS 34 (Miss. 1937).

OPINIONS OF THE ATTORNEY GENERAL

Should a county take title to a tract of land, it would take title, subject to a special assessment tax lien thereon. Campbell, Sept. 15, 2006, A.G. Op. 06-0434.

§ 29-1-99. Easements for flood control, etc.

The land commissioner of the State of Mississippi, with the approval of the governor, is hereby authorized and empowered to grant or donate easements in and to the public lands of the state to any drainage district, flood control district, or to any county in this state, or to the United States or to any agency thereof, for the construction and the maintenance of flood control canals and ditches, or drainage canals and ditches, or other flood control or drainage instrumentalities.

HISTORY: Codes, 1942, § 4114; Laws, 1940, ch. 211.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Easements for pipelines, see § 29-1-101.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. Pl & Pr Forms (Rev), Public Lands, Form 11.1 (petition or application — for grant of right — of— way on public land).

§ 29-1-101. Easements for pipe lines.

The Secretary of State, for and on behalf of the state, may convey an easement or easements for the construction and maintenance of pipe lines in, on, under, and across all of the state land owned (including that submerged or wherever the tide may ebb and flow) now or hereafter acquired, excepting, however, state highway rights-of-way, sixteenth section school land, lieu lands, and forfeited tax land and property the title to which is subject to any lawful redemption, and excepting the state land comprising the old asylum property located in the City of Jackson, property of the Department of Mental Health, the Parchman Penitentiary property located in Sunflower County, Mississippi, and all other Penitentiary property, to any person, firm, or corporation constructing or operating a refinery for the refining of oil, gas, or petroleum products in the state, or to any person, firm, or corporation transporting by pipe line any substance to or from any such refinery in this state, for such consideration as the Secretary of State deems just and proper, which shall be subject to approval by the Secretary of State, the Governor, and the Attorney General of the state, for easements in, on, under, and across the state-owned land.

HISTORY: Codes, 1942, § 4114-01; Laws, 1962, ch. 617, § 1; Laws, 2008, ch. 442, § 12, eff from and after July 1, 2008.

Cross References — Constitutional provision regarding sale of lands to private corporations or individuals, see Miss. Const. Art. 4, § 95.

Other duties and powers of Secretary of State, see § 7-11-11.

Mineral leases of sixteenth section lands, see § 29-3-99.

Construction and operation of facilities for exploration, production, or transportation of oil or gas in navigable waters, see § 53-3-71.

Safety standards for gas pipelines and distribution systems, see §§ 77-11-1 et seq.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. Pl & Pr Forms (Rev), Public Lands, Form 11.1 (petition or application — for grant of right — of— way on public land).

15 Am. Jur. Legal Forms 2d, Pipelines § 203:22 (grant of easement to lay and operate pipeline).

§ 29-1-103. Liability for damages in construction of pipe lines.

No such pipe line shall be built or constructed in a manner to be dangerous to persons or property, nor in a manner to interfere with the common use of public lands, and the owner of any such pipe line shall be responsible in damages for any injury caused by construction or use of such pipe line.

HISTORY: Codes, 1942, § 4114-02; Laws, 1962, ch. 617, § 2, eff from and after passage (approved March 13, 1962).

Cross References — Easements for pipelines over public lands, see § 29-1-101.

RESEARCH REFERENCES

Am. Jur.
15 Am. Jur. Legal Forms 2d, Pipelines §§ 203:71 et seq. (liability for damages; indemnification).

§ 29-1-105. Restrictions on construction or use of pipe lines.

The right to construct or use any such pipe line in, on, under, or across land which is submerged or whereoever the tide may ebb and flow shall be subject to the following:

(a) The paramount right of the United States to control commerce and navigation; and

(b) The right of the public to make free use of the waters; and

(c) The restrictions and prohibitions contained in Section 81 of the Mississippi Constitution of 1890.

HISTORY: Codes, 1942, § 4114-03; Laws, 1962, ch. 617, § 3, eff from and after passage (approved March 13, 1962).

Cross References — Obstruction of navigable waters and authorization of certain construction projects, see Miss. Const. Art. 4, § 81.

Easements for construction of pipelines over public lands, see § 29-1-101.

Liability for damages in construction of pipelines, see § 29-1-103.

§ 29-1-107. Leasing or renting of surface and submerged lands.

(1) The Secretary of State with the approval of the Governor shall, as far as practicable, rent or lease all lands belonging to the state, except as otherwise provided by law for a period of not exceeding one (1) year, and account for the rents therefrom in the same manner as money received from the sale of state lands, provided that no state land shall be rented or leased to individuals, corporations, partnerships, or association of persons for hunting or fishing purposes. Property belonging to the state in municipalities, even though it may have been subdivided into lots, blocks, divisions, or otherwise escheated or was sold to the state by such description, may likewise be leased or rented by the Secretary of State under the terms provided above for other state lands, and the rents accounted for in the same manner. The state shall have all the liens, rights and remedies accorded to landlords in Sections 89-7-1 through 89-7-125; said leases and rental contracts shall automatically terminate on the date provided in said leases or contracts.

(2)(a) The Secretary of State, with the approval of the Governor, may rent or lease surface lands, tidelands or submerged lands owned or controlled by the State of Mississippi lying in or adjacent to the Mississippi Sound or Gulf of Mexico or streams emptying therein, for a period not exceeding forty (40) years for rental payable to the state annually. However, the term of any lease of state public trust tidelands to a person possessing a license under the Mississippi Gaming Control Act shall be governed by the provisions of subsection (4) of this section.

(b) The lessee under such agreement may construct such necessary items for marking channels, docking, wharfing, mooring or fleeting vessels which shall be in aid of navigation and not obstructions thereto.

(c) A lessee of record may be given the option to renew for an additional period not to exceed twenty-five (25) years; however, the term of a renewal for a lease of state public trust tidelands to a person possessing a gaming license under the Mississippi Gaming Control Act shall be governed by the provisions of subsection (4) of this section. The holder of a lease of public trust tidelands, at the expiration thereof, shall have a prior right, exclusive of all other persons, to re-lease as may be agreed upon between the holder of the lease and the Secretary of State.

(d) Leases shall provide for review and rent adjustments at each fifth anniversary tied either to the All Urban Consumer Price Index-All Items (CPI) or to an appraisal which deducts the value of any improvements by the lessee which substantially enhance the value of the land. In the case where the initial rental was based on the value set by the ad valorem tax rolls, then the rent review and adjustment clause shall be likewise based on the value set by such tax rolls. In the event that the lessor and lessee cannot agree on a rental amount, the lease may be cancelled at the option of the lessor. The lessee shall, within thirty (30) days after execution of a sublease or assignment, file a copy thereof, including the total consideration therefor, with the Secretary of State. This paragraph shall not apply to a lease of state public trust tidelands or submerged lands to a person possessing a gaming license under the Mississippi Gaming Control Act who operates a gaming establishment on such tidelands.

(3) Provided, however, the current occupants of public trust tidelands that were developed after the determinable mean high-water line nearest the effective date of the Coastal Wetlands Protection Law shall pay an annual rental based on the fair market value as determined by the assessed valuation of the property. The holder of a lease of public trust tidelands, at the expiration thereof, shall have a prior right, exclusive of all other persons, to re-lease as may be agreed upon between the holder of the lease and the Secretary of State.

(4)(a) This section shall apply to any person possessing a license under the Mississippi Gaming Control Act who operates a gaming establishment in any of the three (3) most southern counties of the state.

(b) The following shall apply to all leases of state public trust tidelands executed by such a licensee:

(i) Every lease executed after August 29, 2005, shall be for a period of thirty (30) years for rental payable to the state annually.

(ii) By operation of this section, any lease executed before August 29, 2005, may, at the option of the lessee, either remain at the term stated in the original execution of the lease or be converted to a thirty-year term lease, beginning on such date after August 29, 2005, that the lessee either resumes or begins permanent gaming activities as approved by the Mississippi Gaming Commission, and the lessee shall be required to comply with all other provisions of the lease. Should the lessee choose to operate in a structure that is not on state public trust tidelands and that is on property contiguous to tidelands leased by the lessee, the lessee shall be required to comply with all other provisions of the lease and shall be exempt from the assessment provided for in paragraph (c) of this subsection. Easements for and rights-of-way for public streets and highways shall not be construed to interrupt the contiguous nature of a parcel of property. In the event that a lessee does not elect either to remain bound by the original term of the lease or to convert the lease to a thirty-year term, the Secretary of State may lease the state public trust tidelands that are the subject of the lease to any other person or entity.

(iii) Leases shall provide for review and rent adjustments at each annual anniversary tied to the All Urban Consumer Price Index-All Items (CPI). In the case of the renewal of a lease after the expiration of the original thirty-year term under this subsection, each renewal shall be for a term of thirty (30) years. The base rate to which the CPI shall apply for purposes of executing the subsequent lease shall be negotiated by the lessee with the Secretary of State.

(c)(i) Except as otherwise provided in this paragraph, any person possessing a license under the Mississippi Gaming Control Act who does not lease public trust tidelands from the state or any of its political subdivisions, and who operates a gaming establishment in any of the three (3) most southern counties of the state, shall pay an annual in-lieu tidelands assessment to the Public Trust Tidelands Assessments Fund (hereinafter referred to as "fund") created in Section 29-15-10, in the amount and manner provided for in this paragraph.

For calendar year 2006, the annual in-lieu tidelands assessment paid by the licensee to the fund shall be:

1. Four Hundred Thousand Dollars ($400,000.00), if the capital investment in the part of the structure in which licensed gaming activities are conducted is Fifty Million Dollars ($50,000,000.00) or less.

2. Four Hundred Fifty Thousand Dollars ($450,000.00), if the capital investment in the part of the structure in which licensed gaming activities are conducted is equal to or more than Fifty Million Dollars ($50,000,000.00) but less than Sixty Million Dollars ($60,000,000.00).

3. Five Hundred Thousand Dollars ($500,000.00), if the capital investment in the part of the structure in which licensed gaming activities are conducted is equal to or more than Sixty Million Dollars ($60,000,000.00) but less than Seventy-five Million Dollars ($75,000,000.00).

4. Six Hundred Thousand Dollars ($600,000.00), if the capital investment in the part of the structure in which licensed gaming activities are conducted is equal to or more than Seventy-five Million Dollars ($75,000,000.00) but less than One Hundred Million Dollars ($100,000,000.00).

5. Seven Hundred Thousand Dollars ($700,000.00), if the capital investment in the part of the structure in which licensed gaming activities are conducted is equal to or more than One Hundred Million

Dollars ($100,000,000.00) but less than One Hundred Twenty-five Million Dollars ($125,000,000.00).

6. Seven Hundred Fifty Thousand Dollars ($750,000.00), if the capital investment in the part of the structure in which licensed gaming activities are conducted is equal to or more than One Hundred Twenty-five Million Dollars ($125,000,000.00).

For each calendar year thereafter, the Secretary of State shall review and adjust the value of the capital investment and the annual in-lieu tidelands assessment due. Such review and adjustment shall be tied to the CPI.

(ii) This paragraph shall not apply to a gaming licensee if the licensee conducts gaming in a structure that is located on property that is leased from the Mississippi State Port at Gulfport or any political subdivision of the state, or to a licensee who conducts gaming in a structure that is located on property that is leased to the licensee jointly by the State of Mississippi and the City of Biloxi; however, with regard to property owned by a political subdivision of the state, this exception shall only apply to property owned by the political subdivision on August 29, 2005, if legal gaming could have been conducted on such property on that date.

(iii) This paragraph shall not apply to a gaming licensee if the licensee conducts gaming in a structure that is located on property that is not leased from the State of Mississippi and/or a political subdivision of the State of Mississippi and is not on state public trust tidelands, and if the licensee conducted gaming on that property before August 29, 2005.

HISTORY: Laws, 1986, ch. 454; Laws, 1989, ch. 495, § 8; Laws, 2005, 5th Ex Sess, ch. 15, § 1, eff from and after passage (approved Oct. 17, 2005).

Cross References — Manner of distribution of funds derived from lease rentals of tidelands and submerged lands, see § 29-15-9.

Responsibility of lessee of tidelands or submerged lands for any tax levy on leasehold interest, see § 29-15-11.

Exemption of certain uses of tidelands and submerged lands from any use or rental fees, see § 29-15-13.

Leasing of certain state lands for hunting, fishing and conservation purposes, see § 49-7-137.

Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

Applicability of this section to the leasing of certain submerged lands and tidelands belonging to the State lying between the East and West Pascagoula Rivers, see § 59-1-17.

Mississippi Gaming Control Act, see §§ 75-76-1 et seq.

Leasing waters for the purposes of aquaculture or the production of aquatic products, see § 79-22-23.

JUDICIAL DECISIONS

1. Discretion of Secretary of State.

Despite the approval of the Mississippi Gaming Commission of a site for gaming, the Secretary of State's decision to deny the public trust tidelands lease was made within the discretion granted to him; the Secretary of State had the final decision-making authority concerning the proposed public trust tidelands lease, and the Secretary of State had the responsibility of preserving the public trust tidelands for the people of the State of Mississippi. Columbia Land Dev., LLC v. Sec'y of State, 868 So. 2d 1006, 2004 Miss. LEXIS 286 (Miss. 2004).

OPINIONS OF THE ATTORNEY GENERAL

The Secretary of State has the authority to require the City of Long Beach and the Long Beach Port Commission to enter into a tidelands lease for water bottoms located within the commission harbor. Grisson, July 27, 1999, A.G. Op. #99-0253.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Lands § 67.

CJS.
73A C.J.S., Public Lands § 197.

Law Reviews.
Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

§ 29-1-109. Fees or commissions prohibited for collecting rent on state-owned property.

It shall be unlawful for any officer or employee of the State of Mississippi or any department, institution, or agency thereof to pay or authorize the payment of any fee, commission, or compensation whatsoever to any person for the collection of rents arising from any property owned by the State of Mississippi or any department, institution, or agency thereof. Any person who shall pay or authorize the payment of any such fees, commissions, or compensation shall be civilly liable to the State of Mississippi in double the amount of the fees, commissions, or other compensation so paid.

HISTORY: Codes, 1942, § 4095.5; Laws, 1950, ch. 558.

§ 29-1-111. Duplicate of conveyance issued.

When any conveyance or any release upon redemption made by the auditor or the land commissioner shall be lost or destroyed, upon the application of the person interested, the land commissioner may make another conveyance or release of the same land to the person to whom the first was made. The latter shall be in lieu of the former, shall be marked "duplicate," and shall have the same effect.

HISTORY: Codes, 1892, § 3858; 1906, § 2938; Hemingway's 1917, § 5273; 1930, § 6050; 1942, § 4148.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Lost records generally, see § 25-55-3.

§ 29-1-113. Presumption of patent in absence of record.

Whenever a sale of land for delinquent taxes to the state has been certified to the state land commissioner for more than twenty-five (25) years and there is no record in the land commissioner's office of said lands having been patented out of the state, there shall arise a presumption that said land has been duly patented out of the state. The land commissioner, with the consent of the attorney general, upon application of anyone claiming title to said land and upon his furnishing proof that the taxes to the state and county have been paid on said land for each year for the past ten (10) years, is hereby authorized to strike said sale, which striking shall be a disclaimer of all right, title, or interest which the State of Mississippi has in such lands.

HISTORY: Codes, 1942, § 4148.5; Laws, 1948, ch. 491; Laws, 1950, ch. 314.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the Secretary of State.

§ 29-1-115. Presumption of validity of patents of forfeited tax land.

Whenever any forfeited tax land patent has been issued by the state for a period of at least ten (10) years, and the patentee has paid into the state treasury the price fixed by the land commissioner, and all taxes accruing and payable upon the land described in such patent subsequent to the issuance thereof have been paid, it shall be presumed that in the procurement of such patent the patentee paid a valid, legal, and adequate consideration therefor, complied with all the requirements of law, and practiced no fraud upon the state, and that such patent is a valid and legal patent; and said state shall thereafter be forever precluded and estopped from questioning the validity of such patent.

HISTORY: Codes, 1942, § 4106.5; Laws, 1950, ch. 323.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 52, 137.

CJS.

73A C.J.S., Public Lands §§ 268 et seq.

§ 29-1-117. Titles and claims vacated and relinquished.

All apparent title and claims of the State of Mississippi to and for lands on account of their sale for delinquent taxes prior to the sales under the Abatement Act of 1875, now held by the state, are hereby vacated and relinquished, leaving the apparent title in those who would have been the owners of the land had not such sales been made, as was the intent and purpose of said act.

HISTORY: Codes, Hemingway's 1917, § 5285; 1930, § 6049; 1942, § 4147; Laws, 1910, ch. 154.

§ 29-1-119. Patents to issue in certain cases.

Where the records of the land office or any office in the state show that full payment was made for any of the lands which were described in the act approved March 2, 1875, and which were leased under the authority of said act by the secretary of state on December 18, 1875, for ninety-nine (99) years from that time, the land commissioner, on application of the lessee or persons holding under him and the payment of the fee prescribed for such patents, shall issue to such lessee a patent which shall vest in him or his heirs, devisees, or assigns title for the unexpired time of such lease to such lands as prescribed by said act of March 2, 1875, and shall inure to the person entitled under the said lease, whether he be living or dead.

HISTORY: Codes, 1906, § 2929; Hemingway's 1917, § 5264; 1930, § 6051; 1942, § 4149; Laws, 1900, ch. 66.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

§ 29-1-121. Agent to collect fund due state.

The Governor may contract with and appoint an agent for the collection of any funds due by the federal government to the State of Mississippi on account of the sale of any land made or hereafter to be made or located or disposed of by the United States, for cash or bounty land warrants or land scrip or certificates of any kind or agricultural college scrip, and to all lands allotted to Indians in severalty, including former and existing Indian, military, or other reservations in said state, and he may allow him such reasonable compensation as may be agreed upon, to be paid only out of funds actually collected by him.

HISTORY: Codes, 1906, § 2928; Hemingway's 1917, § 5263; 1930, § 6054; 1942, § 4152; Laws, 1896, ch. 49.

Cross References — Governor's authority to order suits to be brought in foreign jurisdiction to recover moneys due the state, see § 7-1-33.

RESEARCH REFERENCES

Am. Jur.

14 Am. Jur. Pl & Pr Forms (Rev), Indians, Form 4.1 (complaint, petition, or declaration – by motor fuel dealer – to recover motor fuel taxes wrongfully assessed by state agency against sales on Indian reservation).

22 Am. Jur. Pl & Pr Forms (Rev), Sales and Use Taxes, Form 5.1 (complaint, petition or declaration – for declaratory relief from sales tax levy – taxes assessed on nontaxable transactions – motor fuel taxes wrongfully assessed by state agency against sales on Indian reservations).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 402.1.1 (complaint, petition, or declaration – for declaratory relief from sales tax levy – motor fuel taxes wrongfully assessed by state agency against sales on Indian reservations).

§ 29-1-123. Lists of tax lands prepared; copies to counties.

Immediately after March 26, 1936, it shall be the duty of the land commissioner to prepare or cause to be prepared accurate and complete lists of all lands in each county which have been forfeited to the state for the nonpayment of taxes, the title to which has matured in the state. Such lists shall be prepared for each county separately and embrace and include all lands heretofore sold to the state for delinquent taxes in such county and now held or claimed by the state; and such lists shall be made up in the regular order of townships, ranges, and sections as now appearing on the records of his office. Such lists shall show the date of the tax sale to the state, the amount of taxes, damages, costs, and special assessments of every kind whatsoever for which such lands were sold. No lands heretofore stricken by the land commissioner, with the approval of the Attorney General, from the lists of lands sold to the state for delinquent taxes in his office under the provisions of Section 29-1-31 of the Mississippi Code of 1972 shall be included in the lists of lands to be compiled under the provisions of this section.

Such lists, when completed, shall be examined by the Attorney General; and the land commissioner, with the approval of the Attorney General, shall strike from such lists and from the land book or books in his office all lands which, by reason of insufficient description or other cause, in the opinion of the Attorney General are not the property of the state. The title to the state to such lands as may be thus stricken off shall be thereby relinquished. When such lists shall have been completed, they shall be duly recorded by the land commissioner in a record book provided by him for that purpose in his office, the lists of such lands for each county to be recorded in a separate book, and the land commissioner shall certify to the correctness of such lists as thus recorded.

The land commissioner, after recording in his office such lists of lands sold to the state for delinquent taxes and held or claimed by the state, shall prepare and mail to the chancery clerk of the county in which such lands are situated a certified copy of such lists under the seal of the land office, and the chancery clerk shall record the same in a separate record book in his office provided for that purpose. In counties having two (2) judicial districts, such lists shall be recorded in the office of the chancery clerk of each such judicial district. For recording such lists, the chancery clerk shall be allowed Five Cents (5¢) for each tract of land formerly included as a single assessment embraced in such lists, to be paid out of the county treasury upon allowance of the board of supervisors.

HISTORY: Codes, 1942, § 4077; Laws, 1936, ch. 174.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Certification by chancery clerk to Secretary of State of all lands struck off to the state for taxes which have not been redeemed, see § 27-45-21.

Striking from tax list lands mistakenly claimed by state, see § 29-1-27.

JUDICIAL DECISIONS

1. In general.

Where an action was brought in 1945 against the state to confirm a forfeited tax land patent and there was an adjudication of validity of the patent, and that though fraud had been perpetrated, the land commissioner and attorney general properly refused to cancel the tax sale to state and patent issued thereunder in an action brought therefor in 1949 by the heirs of the original owner of forfeited lands. Carney v. Anderson, 214 Miss. 504, 58 So. 2d 13, 1952 Miss. LEXIS 494 (Miss. 1952).

§ 29-1-125. Collection of sums due state arising from mineral interests.

The State Tax Commission is authorized, empowered, and directed to collect and receive any and all sums of money due the State of Mississippi as royalties or other returns arising as a result of the ownership of tax-forfeited lands, title to which is vested in the state and which lands have not been sold; and the commission is further authorized, empowered and directed to determine the interest of the state in any royalties or other mineral interests due it and accruing or arising from ownership, lease, or otherwise, excepting only lands owned by the state and its institutions which are under the control of a legally constituted board of trustees or other agency having the power to enforce all the rights of the state.

HISTORY: Codes, 1942, § 4078-01; Laws, 1950, ch. 560, § 1.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Department of Revenue generally, see §§ 27-3-1 et seq.

Sales price of tax forfeited lands, see § 29-1-33.

Information to be furnished to state tax commission, see § 29-1-133.

State's lien on minerals for sums due it, see § 29-1-135.

Powers and duties of attorney general relating to public lands, buildings and property, see § 29-1-137.

Jurisdiction of chancery court, see § 29-1-143.
Mineral leases of sixteenth sections, see § 29-3-99.

§ 29-1-127. Reports as to mineral interests and payment of royalties and other returns.

(1) It shall be the duty of any and all persons, firms, or corporations having any interest in the lands described in Section 29-1-125, or in minerals produced from said lands, when requested, to report to the State Tax Commission, on forms furnished and prescribed by it, full information with respect to the interest held, claimed, or owned and of any oil, gas, sulphur, or other mineral products which have been produced or transported by such person, firm, or corporation, and all pertinent or necessary information with respect thereto. Such reports shall be made regardless of the kind of title or interest held, whether as tenant, lessee, producer, purchaser, or transporter. All parties or persons shall pay the State Tax Commission, as agent of the state, any royalties or other returns due the state by reason of its ownership of lands or any interest therein, and shall make full and complete disclosure of all pertinent facts with respect to such matters.

(2) Any person responsible for the payment of royalties or other returns and the distribution of royalties or other returns shall make a report on or before the tenth day of each month, on forms prescribed and furnished by the commission, showing for each oil, gas, or sulphur well or any gravel pit or quarry the total quantity of oil, gas, or other minerals produced in the preceding month, the value in money, the name and address of each person receiving or entitled to receive royalties or other returns, the name and address of the person or persons receiving or purchasing the output of the well, pit, or quarry, and other information required by the commission. The report shall show the quantity and value in money of the product which is owned by the state as owner of the title to the land, and shall remit with the report the total amount due the state. Remittance may be by check or bank draft, but this shall not be a discharge of the debt until the state has received the amount in legal tender.

HISTORY: Codes, 1942, § 4078-02; Laws, 1950, ch. 560, §§ 2, 3.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Department of Revenue generally, see §§ 27-3-1 et seq.

Monies received or collected by State Tax Commission under this section to be separately accounted for, see § 29-1-129.

§ 29-1-129. Accounting for and disposition of monies collected or received.

All monies received or collected by the State Tax Commission under Sections 29-1-125 through 29-1-143 shall be separately accounted for and a permanent record made thereof, showing all proper and necessary details as to the source from which collected, the payor, the quantity, kind, and value of products for which paid, and the description of lands from which severed if the state is the owner of the lands, or the royalties; and it shall issue receipts therefor to the person or persons paying the money. All money collected and received shall be deposited in the bank and paid into the general fund of the state on or before the 10th day of the month following the collection.

HISTORY: Codes, 1942, § 4078-03; Laws, 1950, ch. 560, § 4.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Department of Revenue generally, see §§ 27-3-1 et seq.

§ 29-1-131. Powers and duties of Department of Revenue.

The commission is hereby empowered and authorized to do and require to be done the following things:

(a) Prepare and furnish all necessary forms for use by persons making reports as required by Sections 29-1-125 through 29-1-143; to adopt and issue rules and regulations for the purpose of carrying out the provisions of said sections and for the collection of all sums due the state under the provisions hereof; and to provide for orderly and reasonable procedure for details and for situations which arise from time to time.

(b) To require the state land commissioner to furnish all needed data available in his office.

(c) To require the state oil and gas board to furnish all needed data available in its office.

(d) To require any owner, producer, purchaser, or transporter of any oil, gas, or other minerals to furnish any needed and useful information pertinent to the administration of the cited sections, and in the possession of any such parties; and to require the said persons to furnish monthly reports with respect to current operations.

(e) To require any chancery clerk, or other officer in the state having public records, to furnish copies of any needed and useful information or record in his possession.

Any member of the commission or its authorized agents shall have the authority to examine any book, paper, record, or other data when considered necessary or useful in the administration of the aforesaid sections, and this shall include the right to examine the records of any bank, any common carrier, or any dealer in materials or merchandise commonly used in the severance of oil, gas, or other minerals from land; the commission shall have the right to summon any person as a witness to testify to any pertinent fact; and the commission, through the Attorney General, may have proceedings instituted in the proper court to compel compliance with the foregoing provisions.

(f) Make use of any tax return in its possession, when such return contains information relative to matters connected with the administration of said sections.

HISTORY: Codes, 1942, § 4078-04; Laws, 1950, ch. 560, § 5.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land officer," and "land office" shall mean the Secretary of State.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Powers of Department of Revenue generally, see §§ 27-3-1 et seq.

§ 29-1-133. Information to be furnished to State Tax Commission.

The state land commissioner and the state oil and gas board shall furnish, when requested by the commission, a certified copy of any document, record, letter, or other data needed and useful in the administration of Sections 29-1-125 through 29-1-143, and shall give any information that they have with respect to matters in controversy. The state land commissioner shall furnish a list of all state owned lands shown by the records in his office, if the lands are located in a county or in counties adjoining a county in which is located any oil or gas field in the state.

HISTORY: Codes, 1942, § 4078-05; Laws, 1950, ch. 560, § 6.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office," shall mean the Secretary of State.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — State oil and gas board generally, see §§ 53-1-1 et seq.

RESEARCH REFERENCES

ALR.

Names and addresses of witnesses to accident or incident as subject of pretrial discovery. 37 A.L.R.2d 1152.

§ 29-1-135. Lien of state.

The state shall have a lien on all oil, gas, or other minerals produced from any land owned by it or in which it has any interest, and this lien shall exist and continue against such oil, gas, or other minerals when in the hands of the first owner after severance, the producer, lessee, or transporter. If any of said parties fail to make provision for the payment of the sums due the state, they shall be personally liable, individually and severally, to the state for all sums lawfully due to it.

HISTORY: Codes, 1942, § 4078-06; Laws, 1950, ch. 560, § 7.

§ 29-1-137. Powers and duties of Attorney General.

The Attorney General of the state shall act as attorney for the commission and shall advise it as to all questions arising in connection with the administration of Sections 29-1-125 through 29-1-143, and as to all matters in controversy. He shall represent the commission in any and all suits at law or equity arising from the administration of said sections, and shall bring suit for the collection of any sum due the state on behalf of the commission, as the agent of the state, in all cases which he believes the conditions warrant suit. He may, if deemed advisable, sue in his own name as the chief law officer of the state. He shall represent the commission in all cases involving the title of lands in question, and on any and all other matters arising from the administration of the cited sections.

The Attorney General may request and direct any district attorney to aid in the trial of any suit in the district which he serves and, when so requested, the district attorney shall assist in the conduct and trial of any suit in his district; but the Attorney General shall prepare all bills, declarations, and pleadings.

HISTORY: Codes, 1942, § 4078-07; Laws, 1950, ch. 560, § 8.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Attorney General's duty to render legal opinions, see § 7-5-25.
Prosecution of suits by the Attorney General, see § 7-5-37.
Department of Revenue generally, see §§ 27-3-1 et seq.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Lands §§ 106 et seq.

§ 29-1-139. Agents of Department of Revenue.

The commission shall use as its agents any person employed by the commissioner as provided by law, and assigned to and accepted by the commission; and any such persons, when properly authorized, shall have the power to act to the same extent as the commission itself, except as to such matters that require the adoption of a formal order by the commission.

HISTORY: Codes, 1942, § 4078-08; Laws, 1950, ch. 560, § 9.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Department of Revenue generally, see §§ 27-3-1 et seq.

§ 29-1-141. Interest on unpaid sums.

All due but unpaid and delinquent sums shall bear interest at the rate of one half of one percent (½ of 1%) a month from the month in which due until paid, and a fractional month shall be considered a month. Any amount not reported and paid when due shall be increased by a penalty of ten percent (10%) and interest on the principal, as in other cases of nonpayment.

HISTORY: Codes, 1942, § 4078-09; Laws, 1950, ch. 560, § 10.

§ 29-1-143. Jurisdiction of chancery court.

The chancery court shall have jurisdiction of all matters and causes, including suits and appeals from the commission, arising from the administration of Sections 29-1-125 through 29-1-143, except such causes and suits which the constitution gives to the circuit court. All suits in court shall be governed by the established rules of procedure for the court where the suit is maintained. The commission, as the agent of the state, may be made a party defendant as a citizen, and all process for the commission shall be served on its secretary.

HISTORY: Codes, 1942, § 4078-10; Laws, 1950, ch. 560, § 11.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 29-1-145. State reimbursement of county or municipality for maintenance costs of land to be sold for unpaid taxes.

The chancery clerk or municipal clerk shall report to the Secretary of State any reasonable costs incurred by the county or municipality in maintaining unredeemed lands sold for taxes while those lands remain unsold. The Secretary of State shall pay the maintenance costs out of the money deposited into the Land Records Maintenance Fund. The Secretary of State shall certify to the Department of Finance and Administration and to the State Treasurer the amount of maintenance costs allowed to the county and municipality, and the Department of Finance and Administration shall issue a warrant in favor of the county or municipality for the amount of those costs. In no event shall the maintenance costs allowed the county or municipality exceed the market value of the lands or the purchase money received from the sale of those lands.

HISTORY: Laws, 1994, ch. 583, § 1; Laws, 1995, ch. 352, § 1, eff from and after July 1, 1995.

Cross References — Land Records Maintenance Fund, see § 29-1-95.

RESEARCH REFERENCES

Am. Jur.
72 Am. Jur. 2d, State and Local Taxation § 821.

§ 29-1-147. Relinquishment by state of claims for certain forfeited tax lands.

All apparent title and claims of the State of Mississippi to and for lands on account of their sale for delinquent taxes before January 1, 1950, held by the state on January 1, 1995, are hereby vacated and relinquished, leaving apparent title in those who would have been the owners of the land had not such sales been made, or their lawful grantees or assigns, if any, provided said grantees or assigns are now paying and have paid taxes on said property.

HISTORY: Laws, 1994, ch. 583, § 2, eff from and after July 1, 1994.

OPINIONS OF THE ATTORNEY GENERAL

The word "lands" in this section includes severed mineral interests sold to the state for unpaid taxes. Cheney, August 13, 1999, A.G. Op. #99-0414.

§ 29-1-149. Report of transactions for all conveyances of real property.

Each agency, department, community or junior college and public institution of higher learning of the State of Mississippi shall file a report of transactions for all conveyances of real property, whether purchased, sold, leased, donated or acquired as a gift or through the process of eminent domain, to the Department of Finance and Administration Bureau of Buildings, Grounds and Real Property on a basis determined by the department for the filing of such reports. However, reports, at a minimum, shall be filed with the department at least once annually.

HISTORY: Laws, 2013, ch. 399, § 1, eff from and after passage (approved March 20, 2013).

LEASE OR RENTAL OF CERTAIN STATE-OWNED LANDS IN JACKSON

Sec.	
29-1-201.	Authorization to lease or rent certain state-owned lands located in Jackson; terms, purpose.
29-1-203.	Authorization to lease or rent additional state-owned lands located in Jackson; terms; purpose.
29-1-205.	Lease of certain land in Jackson to national educational honor fraternity.
29-1-207.	Repealed.
29-1-209.	Use of property leased; reversion of property to state.
29-1-211.	Exemption from ad valorem taxation.

§ 29-1-201. Authorization to lease or rent certain state-owned lands located in Jackson; terms, purpose.

(1) The Governor's Office of General Services is hereby authorized and empowered, in its discretion, to lease for a period of not more than fifteen (15) years all or any part of those lands originally leased for ninety-nine (99) years as authorized by an act of the Legislature on March 2, 1875, the same appearing as Chapter LXII, Laws of 1875; said lands lying and being situated in the City of Jackson, First Judicial District, State of Mississippi; or to lease such lands to a public service corporation serving the general public of the State of Mississippi in the City of Jackson, the lease not to exceed a period of twenty-five (25) years; or to rent on a monthly basis the said lands; said rental or lease to be subject to the following terms and conditions applicable thereto:

(a) That the Governor's Office of General Services find and determine that the said lands, or parts thereof, are neither now needed nor are they programmed by the State of Mississippi for governmental purposes within the period of the proposed term of said lease or rental.

(b) That any lease period shall be computed from the expiration of the present lease, if any, on said lands.

(c) That the annual amount paid for leased lands be in an amount of not less than seven and one-half percent (7-½%) of the current fair market value as determined by the averaging of at least two (2) appraisals by members of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers. The said appraisals shall be made not later than six (6) months prior to the expiration of any existing lease, and the said appraisals shall be made available to all interested parties. Thereafter, appraisals on said property may be made every five (5) years (computed from the date of the beginning of each such lease) at the insistence of either party and at the cost of the party demanding same, and the annual dollar rent shall be adjusted in accordance with said appraisal. All such appraisals shall be based on land value less any improvements that may have been heretofore added by the leaseholder in possession, or that hereafter be added by the leaseholder in possession; provided, however, that all improvements permanently affixed to any of the said lands under lease or rental as provided for herein shall become the property of the State of Mississippi upon final termination of such lease or rental.

(d) That the present holders under the unexpired terms of the existing leases shall have the first right and option to re-lease such lands, as they now may hold, provided that the existing leaseholders agree to pay rent at an annual amount of not less than seven and one-half percent (7-½%) of the fair market value of the property as determined by the terms and conditions stated in paragraph (c) of this subsection, and the re-leasing of such lands shall be subject to the other terms and conditions stated in this section. Consideration may be given to the present leaseholders under the existing leases in determining the term of the lease period to be granted under the first right and option as herein provided.

(e) That in the case of monthly rental of said lands or any part thereof, the Governor's Office of General Services is authorized to make such terms and agreements as to the amount and conditions thereof, and to follow such procedure as will insure that a fair and equitable return to the state is effectuated thereby.

(f) That in the event the Governor's Office of General Services is unable to lease the said lands as hereinabove provided or in the event the present leaseholders fail to exercise their option to re-lease, then in that event the Governor's Office of General Services shall, by public notice, offer the said lands to the highest and best bidder therefor; with said notice being published in one or more newspapers of general circulation in each existing congressional district; provided, however, the Governor's Office of General Services shall reserve unto itself the right to reject any or all such bids.

(g) That any present leaseholder of said lands who desires to exercise his right to first option to re-lease, as provided for herein, shall notify the Governor's Office of General Services in writing of his intent to exercise that right not later than three (3) months after the said appraisals provided for in subsection (c) are made available.

(h) That any lease or rental contract or agreement entered into by virtue of this section shall be approved as to form by the Public Procurement Review Board before the same is to be effective.

(i) That all monies derived from the lease, rental, sale or conveyance of such lands be deposited in the state land acquisition fund, which may be utilized for the purchase of additional state lands where authorized by act of the Legislature, for necessary repairs or renovations to facilities on such lands, or for appraisals, studies and other consulting costs related to the potential development, marketing, sale or long-term lease of such lands.

(j) That the Governor's Office of General Services is authorized to borrow money from the Mississippi Development Bank or other financial institution for the purpose of renovation of vacant buildings or portions thereof on such lands and lease the same in an amount less than that required under paragraph (c) of this subsection under the following conditions:

(i) The lease is made to a public service corporation serving the general public of the State of Mississippi in the City of Jackson;

(ii) The lease payments over the initial lease term cover the actual costs of renovation including any interest and fees as well as all costs of the Governor's Office of General Services for utilities, maintenance and security over the lease term; and

(iii) The lease may be subsequently renewed for additional periods not to exceed fifteen (15) years each for an annual amount to be renegotiated and set by the Governor's Office of General Services.

(k) Nothing in this section shall be construed to authorize the sale or transfer of title to the said lands.

(2) It is the intent and purpose of this section to provide a fair and equitable return for the lease or rental of the said seat of government lands, and to afford lessees holding existing leases the first right and option to lease the same lands that they presently hold so as to continue any business or other utilization of the said lands not to exceed the periods provided for herein; and the Governor's Office of General Services is hereby empowered and authorized to follow such procedure and to make such arrangements, not inconsistent with the provisions here, as may be reasonably necessary to effect such purpose and intent.

HISTORY: Laws, 1973, ch. 475, §§ 1, 2; Laws, 1975, ch. 309; Laws, 1988, ch. 380, § 1; Laws, 2015, ch. 477, § 2, eff from and after passage (approved Apr. 22, 2015).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1)(f) and (g). The word "re-lease" was substituted for the word "lease" so that 'option to lease' reads "option to re-lease." The Joint Committee ratified this correction at its August 5, 2008, meeting.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

§ 29-1-203. Authorization to lease or rent additional state-owned lands located in Jackson; terms; purpose.

(1) The Governor's Office of General Services is hereby authorized and empowered, in its discretion, to lease for a period of not more than twenty (20) years with an option to renew for a period of twenty (20) years all, or to rent on a monthly basis any part, of those lands being part of the southwest corner of Section 14, Township 6 North, Range 1 East, in the City of Jackson, Hinds County, Mississippi, and being more particularly described as follows:

Beginning at southwest corner of West Broadmoor Subdivision, as recorded in Plat Book 6, Page 35, in the office of the Chancery Clerk of Hinds County, Mississippi, and run thence easterly along the south boundary of Lot I, of the aforesaid subdivision 261.4 feet to the western right-of-way line of North State Street, run thence southwesterly along the western right-of-way line of North State Street, 111 feet, run thence westerly 242 feet, more or less to the point of beginning.

The rental or lease shall be subject to the following terms and conditions:

(a) That the Governor's Office of General Services find and determine that the said lands, or parts thereof, are neither now needed nor are they programmed by the State of Mississippi for governmental purposes within the period of the proposed term of said lease or rental.

(b) That the annual amount paid for leased lands be in an amount of not less than seven and one-half percent (7½%) of the current fair market value as determined by the averaging of at least two (2) appraisals. Thereafter, appraisals on said property may be made every five (5) years (computed from the date of the beginning of each such lease) at the insistence of either party and at the cost of the party demanding same, and the annual rental shall be adjusted in accordance with said appraisal. All such appraisals shall be based on land value less any improvements that may have been heretofore added by the leaseholder in possession, or that may hereafter be added by the leaseholder in possession; provided, however, that all improvements permanently affixed to any of the said lands under lease or rental as provided for herein shall become the property of the State of Mississippi upon final termination of such lease or rental.

(c) That in the case of monthly rental of said lands or any part thereof, the Governor's Office of General Services be authorized to make such terms and agreements as to the amount and conditions thereof, and to follow such procedures as will insure a fair and equitable return to the state.

(d) That all lease and rental monies from any such leases or rentals be deposited in the state land acquisition fund.

(e) That nothing in this section be construed to authorize the sale or transfer of title to the said lands.

(2) It is the intent and purpose of this section to provide a fair and equitable return for the lease or rental of said state lands. The Governor's Office of General Services is hereby empowered and authorized to follow such procedures and to make such arrangements, not inconsistent with the provisions here, as may be reasonably necessary to effect such purpose and intent.

HISTORY: Laws, 1980, ch. 460, §§ 1, 2; Laws, 1988, ch. 380, § 2, eff from and after July 1, 1988.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Governor's Office of General Services, generally, see §§ 31-11-1 et seq.

§ 29-1-205. Lease of certain land in Jackson to national educational honor fraternity.

(1) The Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management, is hereby authorized, empowered and directed to sell and convey on behalf of the State of Mississippi to a nationally recognized organization which has as its purpose the recognition and promotion of scholarship, leadership and service among two-year college

students throughout the country for the purpose of constructing a national headquarters thereon, the following described state-owned lands. The property authorized to be sold and conveyed is a certain parcel of land situated in the Northwest ¼ of the Northeast ¼ of Section 25, T6N, R1E, Jackson, Hinds County, Mississippi, and being more particularly described as follows, to wit:

Commence at the Southwest corner of Lot 2 of Northeast Heights, a subdivision on file and of record in the Office of the Chancery Clerk at Jackson, Hinds County, Mississippi, in Plat Book 10 at page 45; run thence Southerly along the extension of the West line of said Lot 2 for a distance of 80.00 feet to a point on the South line of Eastover Drive; turn thence right through a deflection angle of 89 degrees 13 minutes and run westerly along the South line of Eastover Drive for a distance of 43.84 feet to the POINT OF BEGINNING; thence leaving said South line of Eastover Drive, turn left through a deflection angle of 95 degrees 41 minutes 50 seconds and run Southerly along a line twenty-five feet from and parallel to the centerline of a 31 foot asphalt drive for a distance of 118.08 feet; turn thence right through a deflection angle of 3 degrees 07 minutes 37 seconds and continue Southerly along a line twenty-five feet from and parallel to the centerline of a 31 foot asphalt drive for a distance of 132.71 feet to a point on the North line of a United Gas Pipe Line Company easement; turn thence right through a deflection angle of 59 degrees 18 minutes 47 seconds and run Southwesterly along the North line of said United Gas Pipe Line Company easement for a distance of 520.00 feet; turn thence right through a deflection angle of 90 degrees 00 minutes 00 seconds and run Northwesterly for a distance of 410.00 feet; turn thence right through a deflection angle of 69 degrees 42 minutes 33 seconds and run Northeasterly for a distance of 238.99 feet to a point on the South line of said Eastover Drive; said point further being on a 2 degrees 27 minutes curve bearing to the right, said curve having a central angle of 8 degrees 58 minutes 45 seconds and a radius of 2258.60 feet; turn thence right through a deflection angle of 53 degrees 12 minutes 08 seconds and run Easterly along the chord of said 2 degrees 27 minutes curve bearing to the right and the South line of said Eastover Drive for a distance of 27.26 feet to the Point of Tangency; turn thence right through a deflection angle of 00 degrees 20 minutes 45 seconds and run Easterly along the South line said Eastover Drive for a distance of 472.74 feet to the POINT OF BEGINNING, containing 5.44 acres more or less.

(2) The Legislature recognizes that Mississippi's public two-year college system is the oldest system of its kind in the nation, and further recognizes that this system enjoys national notoriety and respect for its achievement and promotion of educational, civic, social and cultural excellence. The Legislature declares and finds that the purpose of this legislation is to promote, enhance and foster continued excellence in Mississippi's two-year college system and the overall educational development and improvement of the State of Mississippi and the educational, civic, social, cultural, moral and economic welfare thereof, and that such purposes will be accomplished by the conveyance of the above-described property to an organization within the aforesaid classification for construction of a national headquarters thereon.

(3) The conveyance to be executed by the Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, shall be within the limits contained in Sections 29-1-205 and 29-1-209 and contain a provision reserving unto the state all oil, gas and mineral rights of every kind and character. The conveyance shall make provision for reasonable access to the conveyed premises over existing roadways and to existing utility lines for the benefit of the conveyed premises. The conveyance shall include terms granting to the Board of Trustees of State Institutions of Higher Learning, to the Mississippi Community College Board and to the Mississippi Authority for Educational Television reasonable rights to utilize the improvements to be constructed thereon, or portions thereof, for conference or meeting purposes, specifying the architectural style of the improvements and providing a reasonable setback of wooded undeveloped property contiguous to the improvements in order to maintain the natural environment of the site.

(4) The conveyance herein shall be for such consideration as determined appropriate by the Public Procurement Review Board. Such consideration may be paid or provided in installments over a period of time (not to exceed twenty-five (25) years) and may also be provided in kind. In kind consideration may include the reasonable use of the improvements constructed on the property by the Board of Trustees of State Institutions of Higher Learning and its institutions, the Mississippi Community College Board and the community and junior colleges, and the Mississippi Authority for Educational Television and other state agencies, and the provision of leadership training certification programs for community and junior college faculty and others. Such in kind consideration may also constitute full and fair consideration for the property. In establishing consideration, the board may take into account the appraised value of the property, but shall allow reasonable credit to the purchaser for benefits accruing to the State of Mississippi, including the enhancement of the state's community and junior college program and the promotion of excellence in public education afforded by the location of such organization and its headquarters in this state, the increase in employment made possible, and that the only use which can be made of the conveyed premises is for the organization's national headquarters with reversion to the state otherwise.

HISTORY: Laws, 1989, ch. 564, § 1; Laws, 1995, ch. 516, § 1; Laws, 2014, ch. 397, § 6, eff from and after July 1, 2014.

Cross References — Public Procurement Review Board, see § 27-104-7.

State Board for Community and Junior Colleges, generally, see §§ 37-4-1 et seq.

Mississippi Authority for Educational Television generally, see §§ 37-63-1 et seq.

Board of Trustees of State Institutions of Higher Learning generally, see § 37-101-1 et seq.

§ 29-1-207. Repealed.

Repealed by Laws, 1995, ch. 516, § 5, eff from and after passage (approved March 31, 1995).

§ 29-1-207. [Laws, 1989, ch. 564, § 2].

Editor's Notes — Former § 29-1-207 was entitled: Requirements for execution of lease.

§ 29-1-209. Use of property leased; reversion of property to state.

(1) It is expressly provided and stipulated that the land which is conveyed pursuant to Section 29-1-205 and this section shall be used in the furtherance of the work of the organization and with the understanding that if or when the property is no longer used exclusively for that purpose that the title to the property and all improvements, rights and appurtenances thereon shall revert to and be vested in the State of Mississippi, under the following condition: Consideration for the reversion of any improvements constructed on the property by the organization shall be paid by the State of Mississippi to the organization from any funds appropriated or otherwise made available for such purpose. Consideration for such reversion shall be the average of the fair market value of such improvements as determined by two (2) professional property appraisers, one (1) of whom to be selected by the Department of Finance and Administration and one (1) of whom to be selected by the organization, who are certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board. Appraisal fees shall be paid by the selecting party. Fair consideration shall also be paid by the State of Mississippi for any payments made by the nationally recognized organization to the state for the purchase of such property.

(2) It is expressly provided that the land which is conveyed pursuant to Section 29-1-205 and this section shall automatically revert to and be vested in the state if construction of the national headquarters has not commenced within two (2) years from the conveyance of such property.

HISTORY: Laws, 1989, ch. 564, § 3; Laws, 1995, ch. 516, § 2, eff from and after passage (approved March 31, 1995).

Cross References — Licensing of real estate appraisers generally, see §§ 73-34-1 et seq.

Mississippi Real Estate Appraiser Licensing and Certification Board, see § 73-34-7.

§ 29-1-211. Exemption from ad valorem taxation.

The conveyance of the property pursuant to Sections 29-1-205 and 29-1-209, being for the aforesaid public purpose, the property and any improvements located thereon are exempted from ad valorem taxation.

HISTORY: Laws, 1995, ch. 516, § 3, eff from and after passage (approved March 31, 1995).

RESEARCH REFERENCES

Am. Jur.
71 Am. Jur. 2d, State and Local Taxation §§ 232-234, 254-258.

CJS.
84 C.J.S., Taxation §§ 252-286.

CHAPTER 3.

SIXTEENTH SECTION AND LIEU LANDS

In General. 29-3-1
Sixteenth Section Development Authorities. 29-3-151

IN GENERAL

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§ 29-3-1. Board of education to have control; management of lands and funds as trust property; disapproval by board of supervisors of rental value of lands; definitions.

(1) Sixteenth section school lands, or lands granted in lieu thereof, constitute property held in trust for the benefit of the public schools and must be treated as such. The board of education under the general supervision of the state land commissioner, shall have control and jurisdiction of said school trust lands and of all funds arising from any disposition thereof heretofore or hereafter made. It shall be the duty of the board of education to manage the school trust lands and all funds arising therefrom as trust property. Accordingly, the board shall assure that adequate compensation is received for all uses of the trust lands, except for uses by the public schools.

(2) In the event the board of supervisors declines to approve the rental value of the land set by the board of education, the board of education shall within ten (10) days appoint one (1) appraiser, the board of supervisors shall within twenty (20) days appoint one (1) appraiser and the two (2) appraisers so appointed shall within twenty (20) days appoint a third appraiser whose duty it shall be to appraise the land, exclusive of buildings and improvements, the title to which is not held in trust for the public schools, and to file a written report with each board setting forth their recommendation for the rental value of the land within thirty (30) days. The cost of the appraisal shall be paid from any available sixteenth section school funds or other school funds of the district. If no appeal is taken within twenty (20) days as provided hereunder, the lease shall be executed in accordance with said recommended rental value within thirty (30) days of the receipt of the appraisers' report. In the event any party is aggrieved by the decision of the appraisers setting forth the appraised rental value, the party so aggrieved shall be entitled to an appeal to the chancery court in which the land is located. Such appeal shall be taken within twenty (20) days following the decision. The chancery court, on appeal, may review all of the proceedings, may receive additional evidence, and make findings of fact, as well as conclusions of law to insure that a fair and reasonable return may be obtained on the sixteenth section lands or lands in lieu thereof.

HISTORY: Codes, 1942, § 6598-01; Laws, 1958, ch. 303, § 1; Laws, 1974, ch. 341, §§ 1, 2; Laws, 1978, ch. 525, § 5, eff from and after July 1, 1978.

Editor's Notes — Laws of 1978, ch. 525, § 54, provides as follows:

"SECTION 54. It is the intent of the Legislature that all of the duties, responsibilities and authority vested in the State Land Commissioner under this act shall be transferred by virtue of Senate Bill No. 2470, Regular Session of 1978, to the Office of Secretary of State in accordance with said act."

Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Constitutional provision for determination of title to sixteenth sections, see Miss. Const. Art. 8, § 211.

Duties and powers of Secretary of State, generally, see § 7-11-11.
Jurisdiction and powers of board of supervisors generally, see § 19-3-41.
Sale of lands granted in lieu of sixteenth sections, see §§ 29-3-15 et seq.
State Board of Education generally, see § 37-1-1 et seq.

JUDICIAL DECISIONS

1. In general.

Mandatory rent adjustment is tied to the statutory duty imposed on a school board as trustee to assure adequate compensation is received for Marketplace's use of Sixteenth Section Land and the constitutional prohibition against the board's essentially donating trust land by virtue of receiving grossly inadequate consideration; because rent adjustment is part of the board's duty as trustee of Sixteenth Section Land, this duty cannot be contracted away, even by mutual agreement of the parties. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

Chancery court did not err by denying a lessee's motion for a declaratory judgment that a school board was precluded from adjusting rent based on the time restrictions in a lease because by adjusting the rent, the board was not making an untimely attempt to exercise a right conferred in the lease; rather, the board was carrying out a statutory mandate and, in the process, trying to ensure the annual rent, based on current fair-market value, was constitutionally adequate. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

School board's duty as trustee to assure adequate consideration is received based on current fair market value of the Sixteenth Section Land cannot be waived, even by mutual agreement in a contract; Sixteenth Section leases come with certain constitutional and statutory requirements, one being that rent adjustment at least once every ten years is a mutual, mandatory obligation and not a mere right to be exercised or waived. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

Chancery court did not err by denying a lessee's motion for a declaratory judgment that a school board was precluded from adjusting rent based on the time restrictions in a lease for Sixteenth Section Land because the time restriction ran contrary to the statutory requirement that rent could be adjusted not less than once every ten years. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

Denial by a school board of a request to erect and construct an advertising billboard on the school district's leasehold was appropriate because the agreement between the sublessee and the sub-lessor was a sublease, rather than a license, that required prior approval of the school board. Furthermore, once approval was sought, the school board did not act arbitrarily or capriciously in denying the request to construct the billboard because the board expressed concerns with safety. Smith Petro., Inc. v. Lamar Cty. Sch. Dist., 271 So. 3d 481, 2019 Miss. LEXIS 214 (Miss. 2019).

Motion to remand was granted because under Miss. Code Ann. §§ 7-11-11 and 29-3-1 it was without question that the Mississippi secretary of state and the public school district were necessary parties to the quiet title action that involved 16th section school lands. As such, complete diversity did not exist. Clark Techs., LLC v. Hood, 2009 U.S. Dist. LEXIS 75318 (S.D. Miss. Aug. 14, 2009).

Miss. Code Ann. ch. II, tit. 37, and Miss. Code Ann. §§ 37-7-471 through 37-7-483, do not apply to sixteenth section lands. School districts do not hold title to sixteenth section lands, title resides in the State; where the record was insufficient as to whether the school district had title to a historical mansion on such land, which had been leased for decades to a foundation, and the record was also unclear as to whether there was adequate consideration for renewal of the lease, a remand was required for development of said issues, and summary judgment for the foundation, and against the State, was reversed. Clark v. Stephen D. Lee Found., 887 So. 2d 798, 2004 Miss. LEXIS 1413 (Miss. 2004).

Mississippi Legislature did not violate supremacy clause or any provision of state constitution in granting title to right-of-way over Sixteenth Section School land to railroad pursuant to 1882 charter, and railroad and its successor in interest, rather than county board of education, owned right-of-way; state law placed no binding trust obligation or other burden on Sixteenth Section lands such as would bar legislature from enacting charter in 1882. Madison County Bd. of Educ. v. Illinois C. R. Co., 939 F.2d 292, 1991 U.S. App. LEXIS 19241 (5th Cir. Miss. 1991).

State legislature's grant of right of way to predecessor of plaintiff railroad which included sixteenth section school lands which were supposed to come within authority of board of education pursuant to §§ 29-3-1 and 29-3-3 was valid and not beyond legislative authority or invalid for lack of consideration. Madison County Bd. of Education v. Illinois C. R. Co., 728 F. Supp. 423, 1989 U.S. Dist. LEXIS 15779 (S.D. Miss. 1989), aff'd, 939 F.2d 292, 1991 U.S. App. LEXIS 19241 (5th Cir. Miss. 1991).

A 99-year lease of 3.5 acres of Sixteenth Section school trust land for a one-time fee of $150, amounting to approximately 46 cents per acre per year on a tract of land with a value of $3,575 at the time of the lease, was an unconstitutional donation due to inadequate consideration, and was therefore voidable at the option of the school board; the consideration paid for the leasehold was so unconscionably inadequate that it defeated any challenge by anyone claiming to be a bona fide purchaser. Board of Educ. v. Hudson, 585 So. 2d 683, 1991 Miss. LEXIS 460 (Miss. 1991).

Appraisers of the value of sixteenth section lands were not disinterested freeholders since they held sixteenth section leases. Hill v. Thompson, 564 So. 2d 1, 1990 Miss. LEXIS 531 (Miss. 1990).

A lease of school trust land was voidable for inadequate consideration as violative of the donation clause of Article IV, § 95 of the Mississippi Constitution where the consideration paid for the lease was so grossly inadequate as to shock the conscience and to defeat any challenge even of one otherwise claiming the status of a bona fide purchaser; the inadequate consideration was not a hidden title defect but was a matter of public record, so openly blatant as to put any purchaser on notice of a possible defect in the trustee's title where the tax assessments of the city and the county gave notice of value that should have suggested that a far higher rental was required to meet the constitutional mandate of non-donation, and the appraiser's report stated that only a nominal value was used. As a matter of law, a one-time gross sum payment which amounted to $.07575 per year consideration was grossly inadequate and amounted to a donation of public lands prohibited by the constitution and trust law. Mere compliance with statutory formalities and procedures did not vitiate substantive violation of constitutional prohibitions. The case would be remanded to the school district board of trustees for a new determination of the present rental value by a competent appraiser under the 1978 Reform Act. While the public policy of making all reasonable efforts to keep sixteenth section lands leased so that they might be developed and produce revenue from taxation is not an unworthy goal, and this policy may have influenced past officials in leasing sixteenth section lands for nominal rentals, its emphasis must not overshadow constitutional mandates. Hill v. Thompson, 564 So. 2d 1, 1990 Miss. LEXIS 531 (Miss. 1990).

Miss Const § 211, as amended February 4, 1944, to increase the lease duration limit of Sixteenth Section lands reserved for the support of township schools from 25 years to 99 years, is not self-executing and, therefore, had no effect until 1946 when the legislature amended the Mississippi Code to conform to the provisions mandated by § 211. Thus, a 99-year lease of Sixteenth Section land executed in 1945 was void. Oktibbeha County Bd. of Education v. Sturgis, 531 So. 2d 585, 1988 Miss. LEXIS 436 (Miss. 1988).

In managing sixteenth section school lands, board of education must exercise care and skill that person of ordinary prudence would exercise in dealing with own property; board may require lessees of sixteenth section land to sign leases and may include terms in leases that persons of ordinary prudence would include. Turney v. Marion County Bd. of Education, 481 So. 2d 770, 1985 Miss. LEXIS 2421 (Miss. 1985).

Board of education may choose its own method of valuation for sixteenth section land so long as valuation results in fair market rental value; while board is not bound to use percentage of fair market sale value method, it is not precluded from doing so if that method best yields fair rental value. Turney v. Marion County Bd. of Education, 481 So. 2d 770, 1985 Miss. LEXIS 2421 (Miss. 1985).

Requirement of §§ 29-3-1, 29-3-82 that appraisals be paid for out of sixteenth section school funds applies to appraisals resulting from dispute between board of supervisors and board of education in initial leasing or re-leasing of property and does not apply to appraisals resulting from disputes between lessees and boards of education in reappraisal of land during pendency of lease; accordingly, in latter case, board of education may include lease provision requiring lessee to pay for appraisal. Turney v. Marion County Bd. of Education, 481 So. 2d 770, 1985 Miss. LEXIS 2421 (Miss. 1985).

A lease of sixteenth section land was invalid where it had not been submitted to and approved by the district board of trustees as required by this section. Womack v. Nobles, 382 So. 2d 1081, 1980 Miss. LEXIS 1965 (Miss. 1980).

In a dispute between a county board of supervisors and a school district's board of trustees over whether or not to enter into a 25-year lease on certain sixteenth section lands, the trial court properly ordered the superintendent of education to execute the lease, notwithstanding the fact that a majority of the board of trustees had not approved it, where the board of supervisors was empowered by statute to determine the terms and conditions of all such leases and where the trustees' statutory veto power was only a veto over the annual rental value and was subject to the statutory dispute resolution procedures. Surles v. State, 357 So. 2d 319, 1978 Miss. LEXIS 2506 (Miss. 1978).

Facts alleged in the bill, if supported by proof, would be capable of supporting a finding that the lease of a 320 acre tract of sixteenth section land for an annual rental of $170, although the fair value of the lease was $4,000 per year, amounted to an unconstitutional donation as well as an appropriation of the property to an object not authorized by law. The remedy would be the voiding of the lease rather that its continuation for the remainder of the 25-year lease period with damages prospectively figured for each year of its future existence. Keys v. Carter, 318 So. 2d 862, 1975 Miss. LEXIS 1455 (Miss. 1975).

A 25-year lease of 150 acres of 16th section land for an annual rent of $37.50 from county superintendent of education to himself was void on its face, and a subsequent three-year lease of the same land from the county superintendent to another for an annual rent of $900 showed on its face that the lease to the county superintendent was for a grossly inadequate consideration amounting to a donation of public property to a private individual. County Board of Supervisors, the surety on their bonds, and the county superintendent were liable for the difference between the $900 annual rental and the $37.50 annual rental for each of the three years of the second lease, plus legal interest, rather than its continuation for the remainder of the 25-year lease period with damages prospectively figured for each year of its future existence. Holmes v. Jones, 318 So. 2d 865, 1975 Miss. LEXIS 1456 (Miss. 1975); Keys v. Carter, 318 So. 2d 862, 1975 Miss. LEXIS 1455 (Miss. 1975).

Where evidence showed that the county supervisors had leased unused school buildings located on "sixteenth section land" to a civic association in good faith and without any knowledge that it would subsequently be used to house a private segregated school, such lease was not set aside; however, the sublease by the civic association to the whites-only private academy had a "chilling effect" on the operation of recently desegregated public schools and was set aside. United States v. Mississippi, 499 F.2d 425, 1974 U.S. App. LEXIS 7103 (5th Cir. Miss. 1974).

It is well established that the state, acting through its various local bodies, is charged with the affirmative duty to take whatever steps might be necessary to bring about a unitary educational system free of racial discrimination, and where the state is the lessor of a former public school converted into a segregated private school, located on property specifically designated for the benefit of the public schools, there is a state involvement with such schools, and under such circumstances the proscriptions of the Fourteenth Amendment against racial discrimination by the state must be complied with by the lessee and sublessee as certainly as though they were binding covenants written into the agreement itself. United States v. Mississippi, 476 F.2d 941, 1973 U.S. App. LEXIS 10578 (5th Cir. Miss. 1973), vacated, 499 F.2d 425, 1974 U.S. App. LEXIS 7103 (5th Cir. Miss. 1974).

OPINIONS OF THE ATTORNEY GENERAL

If tenant did not construct buildings on sixteenth section land subject to 20-year lease, allowing tenant to remove buildings constitutes unconstitutional donation of public property. Ward, July 16, 1992, A.G. Op. #92-0440.

Constitutionally mandated sixteenth section trust overrides statutory duty of Department of Archives and History to preserve landmarks. Dortch, Oct. 8, 1992, A.G. Op. #92-0488.

There is granted no general power of approval or veto to board of supervisors concerning other terms of lease of sixteenth section land. Meadows Oct. 21, 1993, A.G. Op. #93-0648.

Under Section 29-3-1(1), adequate compensation must be received from the tenants for any use of the land other than use by the school district. A prospective tenant would be required to compensate the school district for any non school district use of the property. Bourgeois, July 10, 1995, A.G. Op. #95-0047.

Section 29-3-1 et seq. does not specifically authorize school boards to exchange jurisdiction or management of school trust lands. Hilbun, August 23, 1995, A.G. Op. #95-0567.

Interest should be paid on all the sixteenth section funds which are disbursed to Bay/Waveland School District if the funds were in fact invested and interest accrued on them while in the possession of Hancock County School District since, as trust funds, they should have been invested so as to yield a reasonable return. Wyly, July 2, 1999, A.G. Op. #99-0317.

School District may not delete from the payment of annual rentals under a developmental lease property that has been platted once roads and utilities have been constructed for that portion of the property. Chaney, Nov. 25, 2002, A.G. Op. #02-0629.

In connection with the lease by a school district of agricultural land to a developer under a residential development lease contract, the district may not reclassify a swamp and shallow lake on the property to "recreation" or "other" and lease that land for one dollar per acre because of the board's obligation to the board of education as trustee to obtain the highest and best return possible from sixteenth section land. Chaney, Nov. 25, 2002, A.G. Op. #02-0629.

The governmental bodies involved under Section 29-3-1 and Section 29-3-29 are under a duty to enforce the provisions of the trust and to determine what is in the best interest of all of the inhabitants of the township. Cheney, May 16, 2003, A.G. Op. 03-0163.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 1 et seq.

Law Reviews.

1989 Mississippi Supreme Court Review: Sixteenth Section School Land. 59

Miss. L. J. 920, Winter, 1989.

§ 29-3-1.1. Definitions.

For purposes of this chapter, the following terms shall have the meaning ascribed herein, unless the context shall otherwise require.

(a) "Board of education" shall mean that school board of the school district in whose present jurisdiction (i) is situated a sixteenth section of land, or (ii) was originally situated a sixteenth section of land for which land has been granted in lieu thereof. Provided, however, that in the event a sixteenth section is situated within two (2) or more school districts, the term "board of education" shall mean that school board whose school district embraces the greatest land area within the township in which said sixteenth section is located.

(b) "Superintendent of education" shall mean that superintendent of schools of a school district whose board of education has control and jurisdiction over any sixteenth section lands or lands granted in lieu thereof.

HISTORY: Laws, 1978, ch. 525, § 1, as amended by Section 201 of Chapter 492, Laws, 1986; Laws, 2004, ch. 357, § 21, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence. The words "this chapter" were substituted for "this act [see Editor's Note]." The Joint Committee ratified this correction at its August 5, 2008, meeting.

Editor's Notes — This section was codified at the direction of Co-Counsel of The Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 29-3-2. Secretary of State to assist in school trust land management.

It shall be the duty of the Secretary of State to assist the local school districts, when so requested, in establishing and maintaining local school trust land management systems. The Secretary of State shall also identify and coordinate consultative services which might be available to the school districts from other agencies within the state.

HISTORY: Laws, 1978, ch. 525, § 48; Laws, 1988, ch. 518, § 19, eff from and after July 1, 1988.

§ 29-3-3. Suits to establish title.

The board of education may employ one (1) or more competent persons to ascertain the true condition of the title and to institute and prosecute, in the chancery court of the county where the land lies, all necessary suits to establish and confirm the title to each parcel of such land and to fix the date of the expiration of any lease of the same. If any person claim any of said land in fee simple or upon any other terms than that of a lease to expire at a fixed date with absolute reversion to the state in trust, or if the title to such lands rest in parol by destruction of records or otherwise, suit shall be instituted at once or as soon as practicable to test the legality of such claims or to re-establish the lost record.

HISTORY: Codes, 1930, § 6756; 1942, § 6594; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1978, ch. 525, § 6, eff from and after July 1, 1978.

Editor's Notes — Laws of 1987, ch. 391, § 1, provides as follows:

"SECTION 1. The certain transaction dated November 16, 1894, pursuant to Section 4160, Mississippi Code of 1892, involving the exchange of a certain one hundred forty-one and seventy-six one-hundredths (141.76) acres in Hancock County in lieu of all sixteenth section acreage in Township 20 North, Range 14 East, located in Clay County, is hereby confirmed, validated and ratified."

Cross References — Constitutional provision for determination of title to sixteenth section lands, see Miss. Const. Art. 8, § 211.

Prosecution of suits concerning public lands by Secretary of State, see § 29-1-7.

Granting of easements for pipelines across state owned land, see §§ 29-1-101 et seq.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

JUDICIAL DECISIONS

1. In general.

Because the State was the ultimate fee-holder of sixteenth Section lands, it was a necessary party to any action that might forever divest it of title in those lands; when the board of education filed a complaint to quiet and confirm title, and the landowners counterclaimed for clear title on their behalf, the suit became one that endangered the State's interest in protecting its asserted title. Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

State legislature's grant of right of way to predecessor of plaintiff railroad which included sixteenth section school lands which were supposed to come within authority of board of education pursuant to §§ 29-3-1 and 29-3-3 was valid and not beyond legislative authority or invalid for lack of consideration. Madison County Bd. of Education v. Illinois C. R. Co., 728 F. Supp. 423, 1989 U.S. Dist. LEXIS 15779 (S.D. Miss. 1989), aff'd, 939 F.2d 292, 1991 U.S. App. LEXIS 19241 (5th Cir. Miss. 1991).

Where accretions washed against and on and become attached to school land in lieu of sixteenth section and to plantation abutting on Mississippi River, and where the owners of the plantation and board of county supervisors entered into contracts fixing the lines and apportioning accretions between them this was not a sale of sixteenth section or new lands. Board of Supervisors v. Giles, 219 Miss. 245, 68 So. 2d 483, 1953 Miss. LEXIS 386 (Miss. 1953).

County may sue for waste committed in cutting timber from sixteenth section. Jefferson Davis County v. James-Sumrall Lumber Co., 94 Miss. 530, 49 So. 611, 1909 Miss. LEXIS 375 (Miss. 1909), limited, Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

Provisions of Code by which state deals with sixteenth sections through counties is not a delegation of power. Jefferson Davis County v. James-Sumrall Lumber Co., 94 Miss. 530, 49 So. 611, 1909 Miss. LEXIS 375 (Miss. 1909), limited, Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

Title to sixteenth section is in state in trust for schools in township. Jefferson Davis County v. James-Sumrall Lumber Co., 94 Miss. 530, 49 So. 611, 1909 Miss. LEXIS 375 (Miss. 1909), limited, Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

Employment generally of counsel by the year by the board of supervisors, under Code 1892, § 293 (Code 1942, § 2958), in no way deprives it of specially employing a different lawyer to investigate the special matter of title to sixteenth section school lands and to bring suit to confirm title thereto. Warren County v. Dabney, 81 Miss. 273, 32 So. 908, 1902 Miss. LEXIS 116 (Miss. 1902).

Hence a lease made in conformity to the statutes of the state was valid without the previous assent of the inhabitants of the township, where the statute did not require this, notwithstanding Act of Congress of 1852, making the assent of the inhabitants of the township a prerequisite to the validity of leases and sales. Jones v. Madison County, 72 Miss. 777, 18 So. 87, 1895 Miss. LEXIS 33 (Miss. 1895).

A decision of this state erroneously holding that the title to sixteenth section school lands was in the United States instead of the state did not establish a rule of property and, though followed for many years, the doctrine of stare decisis would not be applied. Jones v. Madison County, 72 Miss. 777, 18 So. 87, 1895 Miss. LEXIS 33 (Miss. 1895).

The State of Georgia and not the United States was the donor of these school lands; The United States took no title except in trust for the states to be created, and after a survey of the sections and on the admission of Mississippi as a state the title and control of these sections vested in the state in trust for the inhabitants of the several townships. Jones v. Madison County, 72 Miss. 777, 18 So. 87, 1895 Miss. LEXIS 33 (Miss. 1895).

A suit was maintainable by a county under the former statute where the defendant claimed the sixteenth section in fee simple under a deed from the lessee, though the land was not sold by the county officials. Carroll County v. Jones, 71 Miss. 947, 15 So. 106, 1894 Miss. LEXIS 14 (Miss. 1894).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 60 et seq.

106 et seq.

CJS.

3A C.J.S., Public Lands §§ 106 et seq.

§ 29-3-5. Abstracts of title; alternative title searches by attorneys.

(1) A complete abstract of title may be made of each parcel of said land, and such abstract shall contain references, by book and page, to the acts of congress, the acts of the legislature, and to all records relating thereto. Every such abstract shall be duly certified and recorded in the record of deeds, and be styled and indexed under the head of "School Trust Lands, S________, T________, R________." Said abstract shall be so styled and indexed whether the land be in a sixteenth section or in another section taken in lieu of it, and the original shall be deposited in the land office.

(2) As an alternative to the requirements of subsection (1), a personal examination of the sixteenth section land records by a licensed practicing attorney of the State of Mississippi shall be sufficient, provided it is accompanied by an attorney's title certificate and opinion certifying to the ownership of each sixteenth section. Said title certificate and opinion shall include a complete listing of all persons entitled to possession of said lands and the true condition of the title of said lands.

HISTORY: Codes, 1930, § 6757; 1942, § 6595; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1978, ch. 525, § 7, eff from and after July 1, 1978.

Cross References — Recording of instruments generally, see § 89-5-1 et seq.

§ 29-3-7. Adverse possession.

Adverse possession for a period of twenty-five (25) years, under a claim of right or title, shall be prima facie evidence in such case that the law authorizing the disposition of the lands has been complied with and the lease or sale duly made. If the claim be under a lease, the time at which the lease expires shall be fixed by the court.

HISTORY: Codes, 1930, § 6758; 1942, § 6596; Laws, 1924, ch. 283; Laws, 1930, ch. 278.

Cross References — Adverse possession generally, see § 15-1-13.
Suits to establish title, see § 29-3-3.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application.
2. —Presumption of sale or lease.

1. Construction and application.

Evidence submitted by the landowners would not support a finding that the State actually conveyed the tracts during the pre-1890 window of opportunity; the skeletonized abstracts and other evidence did not support the landowners' adverse possession claim. Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

Adverse possession statute addressing sixteenth section lands is inapplicable to state, thus precluding relief on claim that, because ½ cent per square foot was paid for sixteenth section school trust land, derivative lessees had property rights in land which were being taken away. Morrow v. Vinson, 666 So. 2d 802, 1995 Miss. LEXIS 620 (Miss. 1995).

Adverse possession statute addressing sixteenth section land only applies to make proof of adverse possession prima facie evidence of due execution, payment of consideration, and the like where lawful authority for conveyance exists and conditions of statute are met. Morrow v. Vinson, 666 So. 2d 802, 1995 Miss. LEXIS 620 (Miss. 1995).

The State, acting through its school board, could not be equitably estopped under §§ 29-3-7 and 29-3-52 from asserting inadequacy of consideration in a lease of sixteenth section school lands. Hill v. Thompson, 564 So. 2d 1, 1990 Miss. LEXIS 531 (Miss. 1990).

The statutes of limitation concerning adverse possession do not run against the state. Mississippi State Highway Com. v. New Albany Gas Systems, 534 So. 2d 204, 1988 Miss. LEXIS 544 (Miss. 1988).

The adverse possession statute may not run against a county; if there be any conflict between Article 4, § 104 of the Mississippi Constitution and § 29-3-7, the constitutional provision takes precedence. Board of Education v. Loague, 405 So. 2d 122, 1981 Miss. LEXIS 2278 (Miss. 1981).

In an action for confirmation of title to certain sixteenth section lands that had long been adversely possessed by private individuals, the 25-year adverse possession statute was inapplicable and could not be invoked against the state where there was no presumption of lost grant and no written instrument evidencing a claim or color of title in claimant or her predecessors in title to the 80 acres of land at issue; in addition, the constitution prohibited the running of statutes of limitation against the state in civil causes. Gibson v. State Land Comm'r, 374 So. 2d 212, 1979 Miss. LEXIS 2417 (Miss. 1979).

Title to lieu and sixteenth section school lands could not be acquired by adverse possession pursuant to this section where the Board of School Commissioners, the alleged grantor of the adverse claimants' predecessor in title, did not have the authority to convey the school land at the time of the alleged conveyance. This statute only applies to make proof of adverse possession prima facie evidence of due execution, payment of consideration, and the like where lawful authority for the conveyance exists and the conditions of the statute are met. Adams County v. McCoy, 347 So. 2d 366, 1977 Miss. LEXIS 2046 (Miss. 1977).

The plaintiffs could not establish adverse possession against the county by tacking on the time of possession of their predecessors in title where their predecessors had admitted the county's ownership by petitioning the board of supervisors for the purchase of the timber on the land and accepting a timber deed, all within the time period relied on. Burrage v. Lauderdale County, 245 So. 2d 842, 1971 Miss. LEXIS 1385 (Miss. 1971).

To establish absolute title to sixteenth section lands because of adverse possession, the possession must not be under a claim to an unexpired lease but under a claim to the absolute fee simple title. Sumrall v. State, 209 Miss. 761, 48 So. 2d 502, 1950 Miss. LEXIS 442 (Miss. 1950).

This section [Code 1942, § 6596] is not applicable to substantiate claim of title by adverse possession by plaintiffs who base their rights on an admittedly valid 99-year lease, and the evidence shows that they were only lessees for the unexpired term of the original lease. Pilgrim v. Neshoba County, 206 Miss. 703, 40 So. 2d 598, 1949 Miss. LEXIS 294 (Miss. 1949).

Deeds to defendants' predecessors in title of school lands under a former statute authorizing sale of school lands (§§ 2015-2019, Code of 1871), evidenced a claim of right in their behalf, was color of title in fee simple, and their possession under that claim and color for more than twenty-five years after 1892, in the absence of an affirmative showing that no valid sale was in fact made, renders the title acquired by such adverse possession under claim of title such that it cannot be successfully assailed. Foster v. Jefferson County, 202 Miss. 629, 32 So. 2d 126, 1947 Miss. LEXIS 323 (Miss. 1947), overruled in part, Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

The benefits of this statute cannot be denied to one who has been in undisputed continuous and actual occupancy of lands for the prescribed period under recorded deeds in fee simple purporting to have been executed by lawful authority because a record cannot be found verifying that all statutory steps were taken. Foster v. Jefferson County, 202 Miss. 629, 32 So. 2d 126, 1947 Miss. LEXIS 323 (Miss. 1947), overruled in part, Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

Railroad's title to right of way over sixteenth section lands under order of supervisors after 25 years adverse possession cannot be a sale. Yazoo & M. V. R. Co. v. Bolivar County, 146 Miss. 30, 111 So. 581, 1927 Miss. LEXIS 201 (Miss. 1927).

The statute of limitations does not run against the reversion in a sixteenth section during the existence of a lease. Weiler v. Monroe County, 76 Miss. 492, 25 So. 352, 1898 Miss. LEXIS 141 (Miss. 1898).

A sale in fee of the sixteenth section school lands has never been authorized by law in this state. Weiler v. Monroe County, 76 Miss. 492, 25 So. 352, 1898 Miss. LEXIS 141 (Miss. 1898).

To the same effect, see Amite County v. Steen, 72 Miss. 567, 17 So. 930, 1895 Miss. LEXIS 31 (Miss. 1895); Forsdick v. Tallahatchie County, 76 Miss. 622, 24 So. 962, 1898 Miss. LEXIS 119 (Miss. 1898).

This section [Code 1942, § 6596] is not confined to cases in which a lease has in fact been made and such lease is attacked because of alleged infirmity growing out of absence of evidence in compliance with the law. Carroll County v. Estes, 72 Miss. 171, 16 So. 908, 1894 Miss. LEXIS 123 (Miss. 1894).

Wherever there has been adverse possession for twenty-five years under a paper title, purporting to assign a lease, the statute applies. Carroll County v. Estes, 72 Miss. 171, 16 So. 908, 1894 Miss. LEXIS 123 (Miss. 1894).

2. —Presumption of sale or lease.

Tax collectors deed to school lands leased by county conveyed only the unexpired rights of lessee. Creekmore v. Neshoba County, 216 Miss. 589, 63 So. 2d 45, 1953 Miss. LEXIS 672 (Miss. 1953).

Where a deed conveying school lands that had been sold at public sale, has been in existence over seven years and recited that the land was sold in accordance with the law, all preceding conditions were presumed to have been complied with. Burkley v. Jefferson County, 213 Miss. 836, 58 So. 2d 22, 1952 Miss. LEXIS 433 (Miss. 1952).

Claimant could not claim title by adverse possession for 25 years where tax forfeited land patent did not show whether title conveyed was a fee simple one or unexpired leasehold interest and where claimant testified that none of his predecessors had ever claimed fee simple title, but claimed, as he did also, under unexpired 99-year lease. Sumrall v. State, 209 Miss. 761, 48 So. 2d 502, 1950 Miss. LEXIS 442 (Miss. 1950).

Where forfeited tax land patent, executed and delivered on July 4, 1881, conveying an estate in fee simple and containing no words of limitation of grant to the effect that it was an unexpired lease, recited that the land described therein was sold on May 10, 1875, for the taxes due the state, and it appears that the present holder of title and his predecessors in title had been in possession for more than fifty years since 1892, the presumption arises that the state had parted with fee simple title before January 1, 1874, and that it was a fee simple title and not a lease. Jones v. State, 202 Miss. 705, 32 So. 2d 435, 1948 Miss. LEXIS 210 (Miss. 1948).

There is no presumption that one holding an agreement for a lease upon payment of installment notes actually paid the notes in the absence of proof that he went into possession or otherwise exercised substantial rights over the land. Foster v. Jefferson County, 202 Miss. 629, 32 So. 2d 126, 1947 Miss. LEXIS 323 (Miss. 1947), overruled in part, Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

There must be an affirmative showing that there was no valid sale or lease in order to displace the curative effect of this statute. Foster v. Jefferson County, 202 Miss. 629, 32 So. 2d 126, 1947 Miss. LEXIS 323 (Miss. 1947), overruled in part, Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

No presumption of sale or lease of school land is indulged except that arising under this section [Code 1942, § 6596]. Leflore County v. Bush, 76 Miss. 551, 25 So. 351, 1898 Miss. LEXIS 140 (Miss. 1898).

No presumption that the sixteenth section has been leased will be indulged in support of a tax deed, Code 1892 § 1806 (Code 1942 § 1739), as to prima facie effect of tax deeds, being without application in such case. Leflore County v. Bush, 76 Miss. 551, 25 So. 351, 1898 Miss. LEXIS 140 (Miss. 1898).

In the absence of sufficient evidence a lease of a sixteenth section by school trustees will not be presumed. Weiler v. Monroe County, 74 Miss. 687, 22 So. 188 (Miss. 1897).

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. Legal Forms 2d, Adverse Possession §§ 11:9 et seq. (notices); §§ 11:31 et seq. (affidavits).

Law Reviews.

1989 Mississippi Supreme Court Review: Sixteenth Section School Land. 59 Miss. L. J. 920, Winter, 1989.

§ 29-3-9. Compliance with title requirements.

In all cases where this chapter has not been complied with, the official involved shall forthwith comply with same. It shall be the duty of the state land commissioner to ascertain whether or not said statutes have been complied with. If said state land commissioner shall find that said statutes have not been complied with in any case, he shall call the same to the attention of the board of education involved. If any board of education shall fail or refuse to comply with the mandate of this section, then the action of mandamus shall lie to compel such compliance, and such action may be brought either by the attorney general or any resident citizen of the State of Mississippi on the relation of the attorney general. If the state land commissioner shall find that any board of education is failing to take the necessary steps to effectively comply with said statutes in any case, he shall so certify to the attorney general. It shall thereupon be the duty of the attorney general to institute an action for issuance of a writ of mandamus as hereinabove provided, and to such end he is hereby authorized and empowered to employ competent local counsel to assist him in the prosecution of the same. It shall also be the duty of the state land commissioner in conjunction with the attorney general, to submit a special report in writing to the next regular session of the legislature, which said report shall set forth any instances of noncompliance with said chapter and the steps which have been taken to secure compliance with same.

HISTORY: Codes, 1942, § 6598-04; Laws, 1958, ch. 303, § 4; Laws, 1978, ch. 525, § 8, eff from and after July 1, 1978.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Sixteenth section or lieu lands; biennial report of commissioner; public officials to supply management and investment information, see § 29-1-3.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Duties, responsibilities and authority of the state land commissioner under this chapter being transferred to the office of the Secretary of State, see Editor's Note following § 29-3-1.

§ 29-3-11. Board of education to ascertain whether county has title to lieu lands; certification to land commissioner where it does not.

It shall likewise be the duty of the board of education to ascertain whether or not such county has title to all lieu lands to which it may, by law, be entitled. If it is determined that such county does not have title to all such lands, the board of education shall certify the fact to the state land commissioner who shall institute proper proceedings to secure such lands for such county.

HISTORY: Codes, 1942, § 6598-05; Laws, 1958, ch. 303, § 5; Laws, 1978, ch. 525, § 9, eff from and after July 1, 1978.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Duties and powers of Secretary of State generally, see § 7-11-11.

Duties and jurisdiction of board of supervisors generally, see § 19-3-41.

Duties, responsibilities and authority of the state land commissioner under this chapter being transferred to the office of the secretary of state, see Editor's Note following § 29-3-1.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Suits to establish title, see § 29-3-3.

§ 29-3-13. Exchange of lieu land with state.

When the state owns land in a county which owns land located in another county granted in lieu of the sixteenth section school lands, generally known as "lieu lands," the Governor and land commissioner acting for the state and the board of education acting for such county may, by written agreement, exchange the land owned by the state in such county for "lieu lands" owned by such county in another county.

The title to the state-owned land shall be conveyed to such county by a patent signed by the Governor and land commissioner as other patents are executed under the law. The title to the lieu lands shall be conveyed to the state by deed signed by the superintendent of education on order of the board of education. The written agreement between the state and the county shall be recorded in the minutes of said board of education.

HISTORY: Codes, 1942, § 6627; Laws, 1936, ch. 319; Laws, 1978, ch. 525, § 10, eff from and after July 1, 1978.

Editor's Notes — Laws of 1987, ch. 391, § 1, provides as follows:

"SECTION 1. The certain transaction dated November 16, 1894, pursuant to Section 4160, Mississippi Code of 1892, involving the exchange of a certain one hundred forty-one and seventy-six one-hundredths (141.76) acres in Hancock County in lieu of all sixteenth section acreage in Township 20 North, Range 14 East, located in Clay County, is hereby confirmed, validated and ratified."

Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Duties, responsibilities and authority of the state land commissioner under this chapter being transferred to the office of the Secretary of State, see Editor's Note following § 29-3-1.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Sale of lands granted in lieu of sixteenth sections, see §§ 29-3-15 et seq.

JUDICIAL DECISIONS

1. In general.

The Board of Contractors is vested with the responsibility and authority to promulgate the guidelines and procedures for contractors to follow with regard to obtaining and renewing certificates of responsibility. Clancy's Lawn Care & Landscaping v. Mississippi State Bd. of Contrs., 707 So. 2d 1080, 1997 Miss. LEXIS 708 (Miss. 1997).

The statute, in providing for an exchange of school lands for other lands, violates the Constitution (§ 211, Const 1890) the prohibition of which applies as well to an exchange of school lands for other lands as to a sale thereof for a cash consideration. Bridgforth v. Middleton, 186 Miss. 185, 186 So. 837, 1939 Miss. LEXIS 200 (Miss. 1939).

§ 29-3-15. Sale of lieu lands situated outside county.

Land granted in lieu of sixteenth section lands in this state and situated outside of the county holding or owning the same may be sold. Such lands shall be sold in accordance with the provisions of Sections 29-3-15 through 29-3-25, and the proceeds from such sales may be invested in the manner prescribed by law.

HISTORY: Codes, 1942, §§ 4115, 6597-02; Laws, 1942, ch. 162; Laws, 1948, ch. 497, § 3.

Cross References — Constitutional provision in regard to sixteenth section lands and lieu lands, see Miss. Const. Art. 8, § 211.

Sale of school lands through the Secretary of State, see § 7-11-11.

Control of school lands by county boards of supervisors, see § 29-3-1.

Exchanges of land with the state, see § 29-3-13.

Principal fund to include funds received for sales of lieu lands pursuant to §§ 29-3-15 through 29-3-25, see § 29-3-113.

Purchase of Lien Lands, see § 29-3-19.

Commission's report to Legislature detailing lien lands sold, see § 29-3-25.

OPINIONS OF THE ATTORNEY GENERAL

An appraisal is generally required to establish fair market value for the sale of sixteenth section lieu lands, and a county board of education should obtain two appraisals. Cheney, Jr., Feb. 16, 2001, A.G. Op. #2001-0024.

§ 29-3-17. Lieu land commission.

A commission is hereby established to be known as the lieu land commission, hereinafter referred to as the commission, and such commission shall consist of the attorney general, who shall be ex officio chairman, the secretary of state and the state land commissioner, who shall be ex officio secretary. Said lieu land commission shall have authority to sell all lands granted in lieu of sixteenth section land and located out of the county owning such land situated in the State of Mississippi. From and after July 1, 1981, said lieu land commission shall proceed to sell all such lands granted in lieu of sixteenth section land and located out of the county owning such land situated in the State of Mississippi.

HISTORY: Codes, 1942, § 4116; Laws, 1942, ch. 162; Laws, 1948, ch. 486; Laws, 1978, ch. 525, § 11, eff from and after July 1, 1978.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Duties, responsibilities and authority of the state land commissioner under this chapter being transferred to the office of the Secretary of State, see § 29-3-1.1.

Reports by lieu lands commission, see § 29-3-25.

Principal fund to include funds received for sales of lieu lands pursuant to §§ 29-3-15 through 29-3-25, see § 29-3-113.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Lands §§ 60 et seq. 135 et seq.

§ 29-3-19. Purchase of lieu lands.

Any person desiring to purchase such lands shall file his application for the purchase of same with said lieu land commission upon application blanks to be supplied by said commission for said purpose, and said commission shall fix the price to be charged for said land; provided, however, in no event shall more than one hundred sixty (160) acres of said lands be sold to one (1) person within one (1) year, and in no event shall said lands be sold for less than the fair market value of the land. If the commission approves the application, said application shall then be forwarded to the superintendent of education of the county owning said land. In the event the superintendent and board of education approve said sale, the approval by said board of education being made by order of said board duly entered on its minutes, agreeing on the purchase price of said lands, then the Secretary of State and the Governor shall issue to such applicant a patent to such lands at and for the price agreed upon, such patent to be signed in accordance with the law governing the issuance of state patents. The money received therefor shall be paid into the proper principal fund as provided in Section 29-3-113. Provided, however, the proceeds from the sale of such lieu lands may be used to purchase equivalent lands in the county which owned such lieu lands so sold, said purchase to be made as provided in Section 29-3-27.

HISTORY: Codes, 1942, § 4117; Laws, 1942, ch. 162; Laws, 1978, ch. 525, § 12; Laws, 1989, ch. 375, § 1; Laws, 1989, ch. 430, § 1, eff from and after passage (approved March 22, 1989).

Editor's Notes — Laws of 1989, ch. 430, § 2, provides as follows:

"SECTION 2. This act shall be given retroactive effect in those situations where a county has sold lands granted in lieu of sixteenth section lands located out of the county owning such lands and used the proceeds from such a sale to purchase equivalent lands in the county prior to July 1, 1978, for support of the township schools, provided that all other requirements of law have been met."

Cross References — Duties, responsibilities and authority of the state land commissioner under this chapter being transferred to the office of the secretary of state, see Editor's Note following § 29-3-1.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Principal fund to include funds received for sales of lieu lands pursuant to §§ 29-3-15 through 29-3-25, see § 29-3-113.

Retention of general rights, see § 29-3-21.

OPINIONS OF THE ATTORNEY GENERAL

An appraisal is generally required to establish fair market value for the sale of sixteenth section lieu lands, and a county board of education should obtain two appraisals. Cheney, Jr., Feb. 16, 2001, A.G. Op. #2001-0024.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Lands §§ 60 et seq.
135 et seq.

CJS.
73A C.J.S., Public Lands § 131.

§ 29-3-21. Mineral rights in lieu lands.

All oil and mineral rights in and to the lieu lands disposed of under the provisions of Sections 29-3-15 through 29-3-25 shall be retained by said lieu land commission and shall remain the property of the township owning said lieu land.

HISTORY: Codes, 1942, § 4118; Laws, 1942, ch. 162; Laws, 1978, ch. 25, § 13, eff from and after July 1, 1978.

Cross References — Principal fund to include funds received for sales of lieu lands pursuant to §§ 29-3-15 through 29-3-25, see § 29-3-113.

OPINIONS OF THE ATTORNEY GENERAL

Section 29-3-21 would apply where a proposed easement through 16th section land appears to be a change or improvement to or relocation of existing roads under the jurisdiction of a county, the school board must make a factual determination as to what amount will constitute adequate compensation for any easement granted to the county. Hemphill, Dec. 15, 2006, A.G. Op. 06-0602.

§ 29-3-23. Proceeds of sale of lieu lands.

(1) The proceeds derived from such sales shall be used for the benefit of the schools situated in the township owning the lands. The principal derived from the sale of such land shall not be spent, but only the interest and income derived from such funds may be spent.

(2) [Repealed]

HISTORY: Codes, 1942, § 4119; Laws, 1942, ch. 162; Laws, 1978, ch. 525, § 14; Laws, 1999, ch. 369, § 1, eff from and after passage (approved Mar. 15, 1999).

Editor's Notes — Former subsection (2), which provided counties could make restitution to school district for the principal amount of certain bonds purchased with proceeds from the sale of lieu lands that were not remitted to the school districts entitled to the proceeds, was repealed by its own terms, effective December 31, 2001.

Cross References — Jurisdiction and powers of board of supervisors to expend funds as provided in § 29-3-23(2), see § 19-3-41(6).

Commission's report of lieu lands sold to Legislature, see § 29-3-25.

Investment and lending of funds received pursuant to § 29-3-23(2), see § 29-3-113(g).

RESEARCH REFERENCES

CJS.
73A C.J.S., Public Lands §§ 160-162.

§ 29-3-25. Report of sale of lieu lands.

Said lieu land commission shall make a report to the Legislature every year, setting forth a statement of all such lands sold during that year, and shall file a copy of said report with the Secretary of State.

HISTORY: Codes, 1942, § 4120; Laws, 1942, ch. 162; Laws, 1970, ch. 551, eff from and after July 1, 1970.

Cross References — Principal fund to include funds received for sales of lieu lands pursuant to §§ 29-3-15 through 29-3-25, see § 29-3-113.

§ 29-3-27. Sale of lands situated within school district.

No sixteenth section lands or lands granted in lieu thereof, in whole or in part, situated within the school district holding or owning the same shall ever be sold, except that the board of education may, under the procedures hereinafter provided, sell such lands for industrial development thereon, therein, or thereunder to any persons, firms, or corporations in fee simple, or any lesser estate therein, for a purchase price not less than the fair market value thereof; and when any such sale is made, the deed shall be executed in the name of the State of Mississippi by the superintendent of the said board of education.

As used in this section and in Sections 29-3-29 and 29-3-61, the term "industrial development" shall include restoration as a tourist attraction the place where an organization was founded, which said organization has since been expanded to be national or international in its membership, scope, and influence.

As used in this section and in Sections 29-3-29 and 29-3-61, the term "industrial development" shall also include the consolidation of multiple parcels, each less than 160 acres and not to exceed 320 acres total, of forested sixteenth section lieu land as originally contained in Indemnity List 1 of School Sections approved February 26, 1859, and located in the same county as its controlling school district. Said consolidated parcels shall be utilized to facilitate significant timber industry research. This provision shall stand repealed on December 31, 2016.

The proceeds of the sale in fee simple of any sixteenth section, or lands granted in lieu thereof, in whole or in part, or such part of said proceeds as may be required to purchase acreage of equivalent fair market value, shall be used by the board of education, to purchase other land in the county, which land shall be held in the name of and reserved by the State of Mississippi for the support of the township schools in lieu of the land thus sold, as other sixteenth section lieu land is held, and shall be subject to all laws applicable thereto. Every such sale and every such purchase of land in lieu thereof shall be reported by the secretary of the board of education to the Secretary of State and to the State Forestry Commission within ninety (90) days after the consummation of each such sale and purchase. Any funds from a sale in fee simple of any sixteenth section land, or land granted in lieu thereof, in excess of any amount used to purchase said land in lieu thereof, shall be treated as corpus and shall be invested by the board of education as provided by law. Only the income from such investment shall be expended for current operating expenses of the schools.

HISTORY: Codes, 1930, § 6759; 1942, § 6597; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1946, ch. 443, § 1; Laws, 1948, ch. 497, § 1; Laws, 1961, 2nd Ex Sess ch. 2, § 1; Laws, 1962, ch. 364, § 1; Laws, 1968, ch. 411, § 1; Laws, 1978, ch. 525, § 15; Laws, 1989, ch. 430, § 3; Laws, 2016, ch. 379, § 1, eff from and after passage (approved Apr. 6, 2016).

Editor's Notes — Laws of 1987, ch. 391, § 1, provides as follows:

"SECTION 1. The certain transaction dated November 16, 1894, pursuant to Section 4160, Mississippi Code of 1892, involving the exchange of a certain one hundred forty-one and seventy-six one-hundredths (141.76) acres in Hancock County in lieu of all sixteenth section acreage in Township 20 North, Range 14 East, located in Clay County, is hereby confirmed, validated and ratified."

Laws of 1989, ch. 430, § 2, provides as follows:

"SECTION 2. This act shall be given retroactive effect in those situations where a county has sold lands granted in lieu of sixteenth section lands located out of the county owning such lands and used the proceeds from such a sale to purchase equivalent lands in the county prior to July 1, 1978, for support of the township schools, provided that all other requirements of law have been met."

Section 29-3-61, referred to in this section, provided for the lease of lands for industrial development and was repealed by Laws of 1978, ch. 525, § 55, eff from and after July 1, 1978.

Cross References — Duties, responsibilities and authority of the state land commissioner under this chapter being transferred to the office of the Secretary of State, see Editor's Note following § 29-3-1.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Sale or lease of sixteenth sections or lieu lands for use as industrial parks, see § 29-3-29.

Sale or lease of lands other than sixteenth section lands or lieu lands, acquired by township trustees for school purposes, see § 37-7-531.

Sale of lands belonging to University of Mississippi, see § 37-115-5.

JUDICIAL DECISIONS

1. In general.

Timber on school lands held under a 99-year agricultural lease could not be sold by the board of supervisors without the consent of the lessee, in view of the latter's right to "estovers"; and where board of supervisors sold such timber without lessee's consent, lessee was entitled to maintain a suit to enjoin removal of the timber. Hood v. Foster, 194 Miss. 812, 13 So. 2d 652, 1943 Miss. LEXIS 109 (Miss. 1943).

Ninety-nine-year leases of sixteenth section lands are no longer permitted by law. Hood v. Foster, 194 Miss. 812, 13 So. 2d 652, 1943 Miss. LEXIS 109 (Miss. 1943).

The State Highway Commission may construct and maintain a public highway over school lands without compensation to the county for such use and without condemnation proceedings. Board of Sup'rs v. State Highway Com., 188 Miss. 274, 194 So. 743, 1940 Miss. LEXIS 30 (Miss. 1940).

OPINIONS OF THE ATTORNEY GENERAL

Local and private legislation would not be effective to authorize the sale of sixteenth section lands or lands granted in lieu thereof situated within the county for wildlife habitat preservation when the Constitution and statutes provide that such lands can be sold only for industrial development thereon. See Section 29-3-29. Griffith, April 19, 1995, A.G. Op. #95-0249.

Sixteenth Section Principal Fund Monies cannot be used to acquire two parcels of land for school purposes to enlarge a campus of a new school under construction except in the form of a loan subject to the requirements found in Section 29-3-113. Brown, April 30, 1996, A.G. Op. #96-0196.

In order to qualify for a proposed transaction under Sections 29-3-27 and 29-3-29, the Board of Education must make the determination on its minutes, consistent with fact, that the lands at issue were the site of the founding of this organization and that this organization has since expanded to national and international importance in its membership, scope and influence. Only then could the Board proceed with an industrial sale under Section 29-3-29. Webster, May 10, 1996, A.G. Op. #96-0267.

Based on the language of Sections 29-3-113 and 29-3-27, the County Board of Education may use interest and income derived from the proceeds of the sale of the sixteenth section land to the County Board of Supervisors toward the purchase of a 400-acre tract. The school board may not use money from the principal fund to purchase the 400 acres. Clifton, October 29, 1996, A.G. Op. #96-0685.

The district's lieu lands are school trust lands and differ from other real property because of the fiduciary duty of the State and the Board in regard to the management of the property. The only way school trust lands may be severed by the school board from the school trust is prescribed in Section 29-3-27. Randolph, October 29, 1996, A.G. Op. #96-0634.

RESEARCH REFERENCES

CJS.

73A C.J.S., Public Lands §§ 125 et seq.

§ 29-3-29. Sales for use as industrial parks.

Before any sixteenth section school land or land granted in lieu thereof may be sold or leased for industrial development thereon, therein or thereunder under the provisions of this chapter, the board of education controlling such land shall first determine that such sale or lease will be fair market value. In the determination of the fair market value of said land the comparative sales method shall be used, and the highest and best use of said sixteenth section lands shall be determined on the basis of finding that said land shall be susceptible to any use that comparative land in private ownership may be used, that there will be prompt and substantial industrial development on, in, or under said land after the sale or lease, that the acreage to be sold or leased is not in excess of the amount of land reasonably required for immediate use and for such future expansion as may be reasonably anticipated, and that such sale or lease will be beneficial to and in the best interest of the schools of the district for which said land is held. All of said findings, including the amount of the sale price or gross rental for said land, shall be spread on the minutes of the board of education. Also, if the board of education proposes to sell said land, said board shall first enter into a contract or obtain a legal option to purchase, for a specified price not in excess of fair market value, other land in the county of acreage of equivalent fair market value, and such contract or option shall be spread on the minutes of said board. However, not more than one hundred (100) acres in any one (1) sixteenth section school lands in any county may be sold under this chapter for the purpose of being made an industrial park or a part of such industrial park, provided the provisions of this section and Sections 57-5-1 and 57-5-23 are fully complied with.

A certified copy of the resolution or order of the board of education, setting out the foregoing findings, together with a certified copy of the order approving and setting out the terms of the contract or option to purchase other lands where a sale of land is proposed and an application to the Mississippi Agricultural and Industrial Board for the certificate authorizing said sale or lease, shall be forwarded to the county board of supervisors, which board shall make an independent investigation of the proposed sale or lease and of the proposed purchase of other land.

If said county board of supervisors shall concur in the finding of fact of the board of education, and shall find that it is to the best interests of the schools of the district to enter into such sale or lease, it may enter on its minutes a resolution or order approving the action of the board of education.

If the said county board of supervisors shall not concur in the findings of the board of education, or shall find that the proposed sale or lease will not be in the best interest of the schools of the district, then it may, by resolution or order, disapprove the proposed sale or lease, and such action shall be final.

Except as otherwise permitted by Section 57-75-37(4)(f), there shall be reserved all minerals in, on, and under any lands conveyed under the provisions hereof. Provided, however, that in any county bordering on the State of Alabama, traversed by the Tombigbee River, in which U.S. Highway 82 intersects U.S. Highway 45 and in which is situated a state supported institution of higher learning, upon the sale of any sixteenth section lands for industrial purposes as provided by law, the board of education, the superintendent of education and the Mississippi Agricultural and Industrial Board, may sell and convey all minerals except oil, gas, sulphur and casinghead gas on, in and under the said sixteenth section lands so sold for industrial purposes. Said oil, gas, sulphur and casinghead gas shall be reserved together with such rights of use, ingress and egress as shall not unreasonably interfere with the use of the lands by the purchaser. Prior written approval for such use, ingress and egress, shall be obtained from the surface owner or, if such approval is unreasonably withheld, may be obtained from the chancery court of the county in which said land is located.

Certified copies of the resolutions or orders of the board of supervisors and of the board of education and of the application to the Mississippi Agricultural and Industrial Board shall be transmitted to the county superintendent of education, if there be one in the county, who, if he approves the proposed sale or lease, shall so certify and forward same to the Mississippi Agricultural and Industrial Board. If there be no county superintendent of education in the county, then the board of education whose district embraces the entire county shall so certify and transmit said copies to the Mississippi Agricultural and Industrial Board for further action.

Upon receipt of the aforesaid application and certified copies of the said resolution and orders, the Mississippi Agricultural and Industrial Board shall make investigation to determine whether or not the proposed sale or lease of said land will promote prompt and substantial industrial development thereon, therein, or thereunder. If the board finds that such sale or lease will promote prompt and substantial industrial development thereon, therein or thereunder, and further finds that the person, firm or corporation who proposes to establish said industry is financially responsible, and that the acreage to be sold or leased is not in excess of the amount of land reasonably required for immediate use and for such future expansion as may be reasonably anticipated, then the board, in its discretion, may issue a certificate to the board of education of said district so certifying, and said certificate shall be the authority for the board of education to enter into the proposed sale or lease. If the Mississippi Agricultural and Industrial Board does not so find, then it shall decline to issue said certificate which action shall be final.

The Mississippi Agricultural and Industrial Board, when issuing a certificate to the county board of education certifying its findings and authorizing said sale or lease, may, nevertheless, in its discretion, make such sale or lease conditioned on and subject to the vote of the qualified electors of said district. Upon receipt of a certificate so conditioned upon an election, or upon a petition as hereinafter provided for, the board of education, by resolution spread upon its minutes, shall forward a copy of the certificate to the board of supervisors who by resolution upon its minutes, shall call an election to be held in the manner now provided by law for holding county elections, and shall fix in such resolution a date upon which such an election shall be held, of which not less than three (3) weeks notice shall be given by the clerk of said board of supervisors by publishing a notice in a newspaper published in said county once each week for three (3) consecutive weeks preceding the same, or if no newspaper is published in said county, then in a newspaper having a general circulation therein, and by posting a notice for three (3) weeks preceding said election at three (3) public places in said county. At such election, all qualified voters of the county may vote, and the ballots used shall have printed thereon a brief statement of the proposed sale or lease of said land, including the description and price, together with the words "For the proposed sale or lease" and the words "Against the proposed sale or lease," and the voter shall vote by placing a cross (x) or check (v) opposite his choice of the proposition. Should the election provided for herein result in favor of the proposed sale or lease by at least two-thirds (⅔) of the votes cast being in favor of the said proposition, the board of supervisors shall notify the board of education who may proceed forthwith to sell or lease said land in accordance with the proposition so submitted to the electors. If less than two-thirds (⅔) of those voting in such special election vote in favor of the said sale or lease, then said land shall not be sold or leased.

The board of education shall further be required, prior to passing of a resolution expressing its intent to sell said land, to publish a notice of intent to sell said land for three (3) consecutive weeks in a newspaper published in said county or, if there be none, in a newspaper having a general circulation in said county, and to post three (3) notices thereof in three (3) public places in said county, one (1) of which shall be at the courthouse, for said time. If within the period of three (3) weeks following the first publication of said intent, a petition signed by twenty percent (20%) of the qualified electors of said county shall be filed with the board of supervisors requesting an election concerning the sale, then an election shall be called as hereinabove provided.

HISTORY: Codes, 1942, § 6597-01; Laws, 1948, ch. 497, § 2; Laws, 1961, 2nd Ex Sess ch. 2, § 2; Laws, 1962, ch. 364, § 2; Laws, 1968, ch. 412, § 1; Laws, 1975, ch. 397; Laws, 1978, ch. 525, § 16; Laws, 1989, ch. 430, § 4; Laws, 2016, 1st Ex Sess, ch. 1, § 20, eff from and after passage (approved Feb. 8, 2016).

Editor's Notes — Section 57-1-2 provides that the words "Agricultural and Industrial Board" shall mean the "Department of Economic and Community Development."

Laws of 1989, ch. 430, § 2, provides as follows:

"SECTION 2. This act shall be given retroactive effect in those situations where a county has sold lands granted in lieu of sixteenth section lands located out of the county owning such lands and used the proceeds from such a sale to purchase equivalent lands in the county prior to July 1, 1978, for support of the township schools, provided that all other requirements of law have been met."

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Reservation of mineral rights in lieu lands, see § 29-3-21.

JUDICIAL DECISIONS

ANALYSIS

1.-3. [Reserved for future use.]
4. Under former law.

1.-3. [Reserved for future use.]

4. Under former law.

Under § 6609, Code of 1942 now repealed but substantially re-enacted in § 7 of chapter 443, Laws of 1946 it was held that where notes were executed for the rental of sixteenth section school lands which were payable in middling cotton, and the notes were past due, although the notes were not negotiable they were good and enforceable as between the parties. Terry v. Superintendent of Education, 211 Miss. 462, 52 So. 2d 13, 1951 Miss. LEXIS 377 (Miss. 1951).

Lessee of rural school lands had no right to recover value of improvements erected thereon after the lease had expired and a renewal had been executed to another, where no estoppel or other equitable rights existed. Smith v. Young, 199 Miss. 658, 24 So. 2d 746, 1946 Miss. LEXIS 237 (Miss.), modified, 199 Miss. 658, 25 So. 2d 136, 1946 Miss. LEXIS 238 (Miss. 1946).

The rule that one who erects improvements on the land of another, absent estoppel or other equitable rights, has no right to remove them, except trade structures where the relationship is one of landlord and tenant, applies with respect to a lessee of rural school lands in a sixteenth section. Smith v. Young, 199 Miss. 658, 24 So. 2d 746, 1946 Miss. LEXIS 237 (Miss.), modified, 199 Miss. 658, 25 So. 2d 136, 1946 Miss. LEXIS 238 (Miss. 1946).

Lessee of rural lands in a sixteenth section who sold the lease to purchaser had no right to demand a renewal in his name after the expiration of the original lease as against another to whom a renewal lease to begin at the expiration date of the original lease had been executed, where the purchaser had informed the superintendent of education that he did not care to renew the lease, even though shortly after the execution of the renewal lease and before the expiration of the original lease the original lessee procured a reconveyance of the lease from the purchaser in lieu of foreclosure of deed of trust executed by the purchaser. Smith v. Young, 199 Miss. 658, 24 So. 2d 746, 1946 Miss. LEXIS 237 (Miss.), modified, 199 Miss. 658, 25 So. 2d 136, 1946 Miss. LEXIS 238 (Miss. 1946).

Priority given lessee of sixteenth section lands within a municipality under Code 1942, § 6611 in respect to renewal of the lease does not extend to owners of such leaseholds outside of a city, town or village under this section. Smith v. Young, 199 Miss. 658, 24 So. 2d 746, 1946 Miss. LEXIS 237 (Miss.), modified, 199 Miss. 658, 25 So. 2d 136, 1946 Miss. LEXIS 238 (Miss. 1946).

Sale of leasehold estate of sixteenth section lands to the state for nonpayment of taxes merged the unexpired term thereof in the greater fee simple title of the state and extinguished it, so that the state land commissioner was without power to sell such leasehold and issue a patent therefor. McCullen v. Mercer, 192 Miss. 547, 6 So. 2d 465, 1942 Miss. LEXIS 38 (Miss. 1942).

This act did not contemplate a blanket waiver of the county's right; but a release by the county of its lien must set forth the facts so that the board of supervisors may determine what is a reasonable sum and what are reasonable finances, so that a contract waiving absolutely and unconditionally the entire rights of the county to an undetermined amount of financial assistance, without any determination or finding by the board of supervisors as to the amount necessary, is not valid. Sharkey County v. Southern Credit Corp., 186 Miss. 494, 191 So. 90, 1939 Miss. LEXIS 228 (Miss. 1939).

Under this act the board of supervisors is required to exercise an official discretion as to the amount of the finances necessary and the probable value of the products to be grown, and the ability of the tenant to secure finances without a waiver, in order to give a valid release of the county's lien for rent. Sharkey County v. Southern Credit Corp., 186 Miss. 494, 191 So. 90, 1939 Miss. LEXIS 228 (Miss. 1939).

Under this section, a contract for relief by the county of its lien for rent of leased school land undertaking to waive absolutely and unconditionally the entire rights of the county to an undetermined amount of financial assistance, making the person furnishing financial assistance the judge of the reasonableness of the assistance furnished, or permitting the tenant to determine that amount without reference to any finding by the board of supervisors as to the amount necessary, was void as not setting forth the facts and reasons in detail for determining the reasonable sum and reasonable finances specified in the act. Sharkey County v. Southern Credit Corp., 186 Miss. 494, 191 So. 90, 1939 Miss. LEXIS 228 (Miss. 1939).

Where county superintendent of education leased school land for years 1927 to 1931, inclusive, and tenant went into possession thereof, but no order was entered on minutes of board of supervisors directing or approving lease, the tenancy did not shift liability for payment of drainage taxes from county to tenant under statute imposing liability on lessee. Fighting Bayou Drainage Dist. v. Leflore County, 180 Miss. 223, 177 So. 6, 1937 Miss. LEXIS 102 (Miss. 1937).

Lease for school land, though only for one year, cannot rest in parol, and terms thereof must appear from an order on minutes of board of supervisors directing or approving the lease. Fighting Bayou Drainage Dist. v. Leflore County, 180 Miss. 223, 177 So. 6, 1937 Miss. LEXIS 102 (Miss. 1937).

Where county superintendent of education leased school land which was not situated in city, town or village, and tenant went into possession thereof, but no order was entered on minutes of board of supervisors directing or approving lease, it did not become effective as such, and lessee, at most, became only a tenant of land at will. Fighting Bayou Drainage Dist. v. Leflore County, 180 Miss. 223, 177 So. 6, 1937 Miss. LEXIS 102 (Miss. 1937).

Where county superintendent of education verbally leased school land to tenant for year 1932 and pursued same course for two succeeding years, lease did not relieve county of liability for drainage taxes under statute imposing liability. Fighting Bayou Drainage Dist. v. Leflore County, 180 Miss. 223, 177 So. 6, 1937 Miss. LEXIS 102 (Miss. 1937).

Where payment of drainage taxes on school land was not discussed at time lease was made with county superintendent of education, nor referred to in oral contract of lease therefor, liability for payment of drainage taxes remained with board of supervisors, under statute imposing liability on lessee. Fighting Bayou Drainage Dist. v. Leflore County, 180 Miss. 223, 177 So. 6, 1937 Miss. LEXIS 102 (Miss. 1937).

OPINIONS OF THE ATTORNEY GENERAL

Local and private legislation would not be effective to authorize the sale of sixteenth section lands or lands granted in lieu thereof situated within the county for wildlife habitat preservation when the Constitution and statutes provide that such lands can be sold only for industrial development thereon. Griffith, April 19, 1995, A.G. Op. #95-0249.

In order to qualify for a proposed transaction under Sections 29-3-27 and 29-3-29, the Board of Education must make the determination on its minutes, consistent with fact, that the lands at issue were the site of the founding of this organization and that this organization has since expanded to national and international importance in its membership, scope and influence. Only then could the Board proceed with an industrial sale under Section 29-3-29. Webster, May 10, 1996, A.G. Op. #96-0267.

If sixteenth section land to be sold pursuant to the industrial development statutes is located in a shared township, an affected school district sharing in said revenue is not required to approve the sale; the board of education controlling such land would make the proposal to sell said land pursuant to the provisions of Section 29-3-29 and its decision must be made as a trustee for all of the school districts involved. Cheney, May 16, 2003, A.G. Op. 03-0163.

The governmental bodies involved under Section 29-3-1 and Section 29-3-29 are under a duty to enforce the provisions of the trust and to determine what is in the best interest of all of the inhabitants of the township. Cheney, May 16, 2003, A.G. Op. 03-0163.

RESEARCH REFERENCES

CJS.

73A C.J.S., Public Lands §§ 125 et seq.

§ 29-3-31. Survey and classification of lands in Choctaw Purchase.

It is hereby made the duty of the board of education, using the services of all appropriate public agencies, to survey and classify all sixteenth section lands in the Choctaw purchase and lands granted in lieu thereof reserved for the support of township schools. Said lands shall be classified into eight (8) categories, as follows: (1) forest land; (2) agricultural land; (3) industrial land; (4) commercial land; (5) farm-residential land; (6) residential land; (7) recreational land; and (8) other land. The classifications shall be applied to said lands based upon the finding of the highest and best use of each parcel or tract for producing a maximum of revenue by proper utilization. In determining the highest and best use of these lands, the same principles shall be followed as are applied in determining the highest and best use of land in private ownership.

Notwithstanding anything herein to the contrary, all land that is being used as "residential land" or "farm-residential land" shall continue to be classified as "residential land" or "farm-residential land" until such land ceases to be used as a residence.

All sixteenth section lands in the Choctaw purchase and lands granted in lieu thereof, regardless of classification, shall be deemed to contain oil, gas and minerals, including the following: (a) oil, gas, carbon dioxide and other gaseous substances; (b) metals, compounds of metals or metal-bearing ores; (c) coal, including anthracite, bituminous, subbituminous, lignite and their constituent components and products and minerals intermingled or associated therewith; and (d) sulphur, salt, sand, gravel, fill dirt and clay.

Such oil, gas and minerals shall be leased for exploration, mining, production and development as provided for in Section 29-3-99, regardless of the classifications of the lands in, on or under which such oil, gas and minerals are situated. Statutory procedures for the leasing of the surface of the land in such eight (8) classifications shall not apply to such oil, gas and minerals in, on or under such lands.

Such oil, gas and minerals shall be deemed a separate classification of sixteenth section lands for the purpose of Section 211 of the Mississippi Constitution.

HISTORY: Codes, 1942, § 6598-06; Laws, 1958, ch. 303, § 6; Laws, 1978, ch. 525, § 17; Laws, 1992, ch. 486 § 1, eff from and after passage (approved May 7, 1992).

Cross References — Constitutional provision for determination of title to sixteenth sections, see Miss. Const. Art. 8 § 211.

Supervisory power of Secretary of State over Choctaw school lands, see § 29-1-3.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Sale of lands granted in lieu of sixteenth sections, see §§ 29-3-15 et seq.

Definition of land classifications see § 29-3-33.

Leases of land for oil, gas and mineral exploration, mining, production and development, see § 29-3-99.

JUDICIAL DECISIONS

1. In general.

No delay on the part of the land commissioner in classifying sixteenth section and lieu lands either as forest lands or otherwise affects the mandatory requirement of Code 1942, § 6598-12 that the board of supervisors shall enter into agreements with the state forestry commission relative to the management of forest lands and the regulation of and sale of timber from such lands, and a demurrer to a bill of complaint filed by the State of Mississippi against the members of the board of supervisors of Amite county, the sureties on their bonds, and the proposed purchaser of timber should have been overruled. State ex rel. Patterson v. Buffalo Wood, Inc., 204 So. 2d 853, 1967 Miss. LEXIS 1218 (Miss. 1967).

OPINIONS OF THE ATTORNEY GENERAL

Sixteenth section lands are not validly classified as "farm residential land" if the lease holder does not reside on the property or meet one of the exceptions in Miss.

Code Section 29-3-33(f), and the board of education has a duty to reclassify the land based on its "highest and best use . . . for producing a maximum of revenue". Frierson, July 18, 1997, A.G. Op. #97-0431.

In connection with the lease by a school district of agricultural land to a developer under a residential development lease contract, the district may not reclassify a swamp and shallow lake on the property to "recreation" or "other" and lease that land for one dollar per acre because of the board's obligation to the board of education as trustee to obtain the highest and best return possible from sixteenth section land. Chaney, Nov. 25, 2002, A.G. Op. #02-0629.

Any reclassification of 16th section school trust land is impermissible if it results in a reduction in the annual rent. Furthermore, once 16th section land which has been classified as agricultural, it may not thereafter be reclassified as farm-residential. Cheney, Sept. 24, 2004, A.G. Op. 04-0457.

§ 29-3-33. Lands defined for classification.

For the purpose of determining the proper category for such lands and the oil, gas and other minerals in, on and under such lands, the following definitions shall be controlling unless the context clearly indicates otherwise:

(a) "Forest land" shall mean all land at least ninety percent (90%) of the total area of which is at present forest or wasteland, or land which will produce a maximum of revenue by utilization to produce timber or other forest products, shall be classified as forest land. The unit of measurement to be used in arriving at the classification of forest land shall be the smallest division of the government survey covering said lands in counties where such government survey has been made, and in other counties shall be forty (40) acres.

(b) "Agricultural land" shall mean land most suitable for pasturage or cultivation.

(c) "Industrial land" shall mean land most suitable for port, harbor, industrial, manufacturing or warehousing use.

(d) "Commercial land" shall mean land most suitable for wholesale or retail businesses, financial institutions, professional offices and clinics, service trades and occupations, privately owned public utilities and similar businesses.

(e) "Residential land" shall mean any tract of land upon which the lessee or board-approved sub-lessee is residing. Such lands shall be set up, as nearly as possible, in a rectangular form so as to include the houses and such other permanent improvements as may have been placed thereon by said lessee or his predecessor in title; provided, however, that such tract of land shall not exceed five (5) acres.

(f) "Farm residential land" shall mean any tract of land upon which a leaseholder resides not exceeding one hundred sixty (160) acres in size existing on July 1, 1978, which is utilized for agricultural purposes. Provided, however, that farm residential land may consist of two (2) noncontiguous tracts not exceeding one hundred sixty (160) acres in the aggregate (a) with reasonable easements connecting the residential and outlying tracts; or (b) within the residential tract situated a distance not exceeding one and one-half (1½) miles from the outlying tract. Provided further that no sixteenth section lands or lands granted in lieu thereof, situated in a county lying wholly or partially within a levee district shall be classified as farm residential land.

(g) "Recreational land" shall mean land most suitable for uses which provide for activities or services of a recreational nature. Recreational nature shall include, but not be limited to, parks, campsites, lodges and similar uses and facilities.

(h) "Catfish farming land" shall mean land most suitable for the construction of catfish ponds and for wholesale or retail catfish farm raising and harvesting.

(i) "Other land" shall mean any land which is not suitable for any of the uses described above.

(j) "Oil, gas and minerals" shall mean the following: (i) oil, gas, carbon dioxide and other gaseous substances; (ii) metals, compounds of metals, or metal-bearing ores; (iii) coal, including anthracite, bituminous, subbituminous, lignite and their constituent components and products and minerals intermingled or associated therewith; and (iv) sulphur, salt, sand, gravel, fill dirt and clay, in, on and under the lands classified above. Such oil, gas and minerals shall be a classification of land separate and distinct from the classifications set forth above in paragraphs (a) through (h) inclusive.

HISTORY: Codes, 1942, § 6598-07; Laws, 1958, ch. 303, § 7; Laws, 1978, ch. 525, § 18; Laws, 1992, ch. 486 § 2; Laws, 1995, ch. 623, § 1, eff from and after July 1, 1995.

Cross References — Duty of board of education to classify land in the Choctaw Purchase, see § 29-3-31.

Public agencies to assist in classification of land according to the definitions set out in this section, see § 29-3-35.

Objections to classifications, see § 29-3-37.

Reclassification of lands, see § 29-3-39.

Leasing of agricultural land, see § 29-3-81.

Leasing of land not classified as agriculture, see § 29-3-82.

OPINIONS OF THE ATTORNEY GENERAL

Land that is presently classified as forest land which is to be leased to a county school district would require a reclassification of land use as is found in Sections 29-3-33 and 29-3-39. In evaluating the appropriate rental compensation to the city school district, the rental rate must comply with 29-3-63(2). Hilbun, August 23, 1995, A.G. Op. #95-0567.

A tract of land is properly classified as "farm residential land" only if the lease holder uses the property for agricultural purposes and resides directly upon the leased premises, the leaseholder resides on a residential tract for which there are "reasonable easements connecting the residential tracts" or resides on a "residential tract" that is "situated a distance not exceeding one and one-half (1-1/2) miles from the outlying tract". Frierson, July 18, 1997, A.G. Op. #97-0431.

The "residential tract" mentioned in subsection (f)(b) consists of the tract where the leaseholder resides, must be located on sixteenth section land, and may not consist of privately owned land beyond sixteenth section land. Bryan, Feb. 4, 2000, A.G. Op. #2000-0039.

The intent of the language used by the legislature in subsection (f) was to allow a residential tract to be located outside of the school section, as long as it is located within 1-1/2 miles of the outlying tract. Boyles, Nov. 3, 2000, A.G. Op. #2000-0639.

The clear intent of the legislature in the definition stated in subsection (f) of this section is that no land may be classified farm-residential unless it has been classified continuously as farm residential since July 1, 1978. Cheney, Sept. 24, 2004, A.G. Op. 04-0457.

Section 29-3-69 indicates that sub-leasing or assignment of any lease is permissible if it is provided for in the lease contract or at the discretion of the board of education. The statute does not provide for partial assignments. Cheney, Sept. 24, 2004, A.G. Op. 04-0457.

§ 29-3-35. Public agencies to assist in classification.

The board of education is authorized and empowered to supervise and direct the classification of all sixteenth section lands or lieu lands, according to the definition hereinabove set out. In making the classifications provided by Sections 29-3-31 through 29-3-39, the board of education is authorized and empowered to request the services of any public agency within this state which is equipped and qualified to assist in such classification. It is hereby made the duty of any such agency when so requested to assist the board of education in making such classification.

HISTORY: Codes, 1942, § 6598-08; Laws, 1958, ch. 303, § 8; Laws, 1978, ch. 525, § 19, eff from and after July 1, 1978.

Cross References — Duties of secretary of state generally, see § 7-11-11.
Supervisory power of Secretary of State over Choctaw school lands, see § 29-1-3.
Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.
Sale of lands granted in lieu of sixteenth sections, see §§ 29-3-15 et seq.
Definition of land classifications, see § 29-3-33.

§ 29-3-37. Objections to classification.

At any time when any or all portions of such land lying in a county shall have been classified as hereinabove required, a classification report shall be compiled by the board of education and filed with the public lands division of the secretary of state who shall provide forms for such purpose. The board of education shall immediately cause notice to be given of the completion of such classification, such notice to be published in a newspaper in said county once each week for three (3) consecutive weeks, or if no newspaper is published in said county then in a newspaper having a general circulation therein, listing all lands so classified and notifying all parties in interest that they will have a right to appeal and object to the classification as made. If no objections are made as to the classification of any particular parcel of said land by the public lands division of the secretary of state or any other party in interest, which objection must be reduced to writing and filed with the chancery clerk within thirty (30) days from the date of the final publication, the classification as to such parcel or parcels of land shall be final. A copy of such notice shall be mailed by the superintendent of education to each lessee of any part of such lands, such notice to be so mailed not later than the date of the first publication of the notice of the classification of such land, which notice shall also set forth the classification which has been established for all lands under lease by such lessee. If objections are filed, then the matter shall be heard by the chancery court in term time or in vacation, and the court shall either confirm or modify the classification as the circumstances shall demand. Upon the filing of such objection by an individual other than the public lands division of the secretary of state, the chancery clerk shall immediately forward a certified copy of such objection to the public lands division of the secretary of state and the appropriate board of education, along with any necessary service of process. The public lands division of the Secretary of State and any other person aggrieved by the order of the chancery court shall have the same rights of appeal as is provided by law for appeals from other orders of the chancery court, and such appeal shall be perfected as other appeals are now required to be so perfected.

The cost of any such classification or reclassification under Section 29-3-39 shall be paid from any available sixteenth section school funds or other school funds of the district.

HISTORY: Codes, 1942, § 6598-09; Laws, 1958, ch. 303, § 9; Laws, 1978, ch. 525, § 20; Laws, 1983, ch. 454, eff from and after passage (approved March 31, 1983).

Cross References — Duties and powers of Secretary of State, generally, see § 7-11-11.

Other miscellaneous duties of chancery clerk, see § 9-5-137.

Jurisdiction and powers of board of supervisors generally, see § 19-3-41.

Duties, responsibilities and authority of the state land commissioner under this chapter being transferred to the office of the Secretary of State, see Editor's Note following § 29-3-1.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Public agencies to assist in classification, see § 29-3-35.

Reclassification of lands, see § 29-3-39.

§ 29-3-39. Reclassification of lands.

It shall be the duty of the board of education to survey periodically the classification of all sixteenth section land under its jurisdiction and to reclassify that land as it may deem advisable because of changes of conditions, and when any land is so reclassified, the board of education shall file a report thereof with the Secretary of State. From time to time the Secretary of State may institute proceedings to reclassify any sixteenth section lands which he may deem advisable and when any land is so reclassified, the Secretary of State shall file a report thereof with the board of education. When any land is reclassified under this section, notice thereof, rights to object thereto and rights to appeal therefrom shall be given in the same manner provided in Section 29-3-37 with reference to the original classification. However, all sixteenth section land shall be classified, or reclassified as is necessary, within one (1) year prior to the expiration date of any existing lease, and within sixty (60) days of the terminating of any lease of sixteenth section land by final court order. In all litigation which may result from the classification or reclassification of lands by the Secretary of State under Sections 29-3-31 through 29-3-39, the Secretary of State shall be represented by the Attorney General, who shall have control of the litigation except as otherwise authorized in Section 7-5-39, but it shall be the duty of the various boards of education to furnish local legal assistance when requested so to do by the Attorney General.

HISTORY: Codes, 1942, § 6598-10; Laws, 1958, ch. 303, § 10; Laws, 1978, ch. 525, § 21; Laws, 2012, ch. 546, § 13, eff from and after July 1, 2012.

Cross References — Duties and powers of Secretary of State, generally, see § 7-11-11.

Duties, responsibilities and authority of the state land commissioner under this chapter being transferred to the office of the Secretary of State, see Editor's Note following § 29-3-1.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Cost of reclassification being paid from any available sixteenth section school funds or other funds of school district, see § 29-3-37.

JUDICIAL DECISIONS

1. In general.

The State Land Commissioner has the authority to initiate reclassification proceedings. Tally v. Carter, 318 So. 2d 835, 1975 Miss. LEXIS 1449 (Miss. 1975).

Sixteenth section lands may be reclassified only when it is necessary to do so in order to produce a maximum of revenue. Tally v. Carter, 318 So. 2d 835, 1975 Miss. LEXIS 1449 (Miss. 1975).

Where county superintendent of education filed objections to reclassification by the State Land Commissioner, the lessees of such land were entitled to file answers to the objections. Tally v. Carter, 318 So. 2d 835, 1975 Miss. LEXIS 1449 (Miss. 1975).

Judicial review by the chancery court of the action of the Land Commissioner in reclassifying sixteenth section lands is limited to a determination of whether or not the reclassification is required in order to produce a maximum of revenue, and the burden of proof in this respect is on the proponent of reclassification. Tally v. Carter, 318 So. 2d 835, 1975 Miss. LEXIS 1449 (Miss. 1975).

OPINIONS OF THE ATTORNEY GENERAL

Land that is presently classified as forest land which is to be leased to a county school district would require a reclassification of land use as is found in Sections 29-3-33 and 29-3-39. In evaluating the appropriate rental compensation to the city school district, the rental rate must comply with 29-3-63(2). Hilbun, August 23, 1995, A.G. Op. #95-0567.

Sixteenth section lands are not validly classified as "farm residential land" if the lease holder does not reside on the property or meet one of the exceptions in Miss. Code Section 29-3-33(f), and the board of education has a duty to reclassify the land based on its "highest and best use . . . for producing a maximum of revenue". Frierson, July 18, 1997, A.G. Op. #97-0431.

§ 29-3-40. Farm residential or residential lands exchanged for other lands of equal value.

The land commissioner is authorized, in his discretion, to make a feasibility study to determine if sixteenth section lands and lieu lands classified as farm residential or residential lands could be exchanged for other lands of equal value located within the same county, without injury to the value of the lands held in trust for the public schools.

HISTORY: Laws, 1978, ch. 525, § 50, eff from and after July 1, 1978.

Editor's Notes — Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Cross References — Duties, responsibilities and authority of the state land commissioner under this chapter being transferred to the office of the Secretary of State, see Editor's Note following § 29-3-1.

Definitions of "farm residential land" and "residential land," see § 29-3-33.

§ 29-3-41. Lease of forest lands restricted.

After any parcels of sixteenth section lands have been classified as hereinabove provided, all land which has been classified as forest land and which is not now under lease shall hereafter not be leased. The lands classified as forest lands which may be under a lease that has a fixed date of expiration shall not be re-leased when said lease expires; nor shall the lessee be permitted to cut or remove any timber therefrom except according to the terms of his lease. Such lands shall be reserved and kept as forest lands. Provided further, that the mineral rights in all such lands may be leased for oil, gas, or mineral purposes, and the board of education may grant leases to the surface of said lands classified as forest, which are limited to hunting and fishing rights and activities in relation thereto, and which shall not extend for a period longer than fifteen (15) years. It shall be the duty of the board of education to lease said hunting and fishing rights at public contract after having advertised same for rent in a newspaper published in said county or, if no newspaper be published in said county, then in a newspaper having a general circulation therein, for two (2) successive weeks, the first being at least ten (10) days prior to said public contract. Said hunting and fishing rights shall be leased to the person offering the highest annual rental. Bids received by the board of education in response to the advertisement shall be opened at a regular or special meeting of the board. The board of education, at its option, may reject all bids or accept the highest and best bid received in response to the advertisement, or the board of education may hold an auction among those who submitted bids in response to the advertisement, provided that three (3) or more persons who submitted bids in response to the advertisement participate in the auction. The opening bid at the auction shall be the highest bid received in response to the advertisement. Provided that if the board of education receives an acceptable bid or elects to hold an auction, the most recent holder of said hunting and fishing rights if it shall have made an offer, shall have the final right to extend its lease for the term advertised at the annual rental equal to said highest offer received by the board of education, or equal to the highest bid offered at the auction, as the case may be.

If no bid acceptable to the board of education is received after said advertisement, the board of education may, within ninety (90) days, lease same by private contract for an amount greater than the highest bid previously rejected. If the board of education determines to lease the land by private contract, the most recent holder of said hunting and fishing rights, if it shall have made an offer, shall have the final right to extend its lease on the same terms and conditions as those contained in the private contract proposed to be accepted by the board of education.

HISTORY: Codes, 1942, § 6598-11; Laws, 1958, ch. 303, § 11; Laws, 1978, ch. 525, § 22; Laws, 1993, ch. 396, § 1; Laws, 2011, ch. 493, § 1, eff from and after July 1, 2011.

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Definition of term "forest land," see § 29-3-33.

Mineral leases, see §§ 29-3-85, 29-3-99.

Setting aside, reservation, and dedication of sixteenth section and lieu lands for public parks and recreation areas, see § 29-3-87.

JUDICIAL DECISIONS

1. Rights of most recent leaseholder.

The plain language of the statute required that the most recent leaseholder be granted a hunting and fishing lease where another person made a higher bid for the lease and the most recent leaseholder then tendered a check equal to that bid. Tucker v. Prisock, 791 So. 2d 190, 2001 Miss. LEXIS 62 (Miss. 2001).

OPINIONS OF THE ATTORNEY GENERAL

A decedent's interest in the leasehold property, which vested in his heirs at law at the time of his death, sufficiently entitles them the right to extend the lease upon expiration of the original term, pursuant to Section 29-3-41. Chaney, June 21, 1996, A.G. Op. #96-0384.

A shool board did not have authority to extend a lease with a specified individual as a result of the fact that he did not have access for several months. Mayfield, May 30, 2002, A.G. Op. #02-0293.

If a school board determines that a nondiscriminatory clause is prudent and in the best interest of the school district, then it may include such a provision in its sixteenth section leases. Mayfield, May 31, 2002, A.G. Op. #02-0292.

Section 29-3-41 does not provide for a reduction in the rental payment due by the lessee. Covington, Oct. 6, 2006, A.G. Op. 06-0446.

§ 29-3-43. Improvements on forest lands.

If any sixteenth section land is declared forest land at the end of a lease, the board of education shall make an appraisal and either pay a suitable amount to the lessee for the improvements or allow lessee to remove the same from the section land.

HISTORY: Codes, 1942, § 6598-15; Laws, 1958, ch. 303, § 15; Laws, 1978, ch. 525, § 23, eff from and after July 1, 1978.

Cross References — Jurisdiction and powers of boards of supervisors generally, see

§ 19-3-41.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Definition of "forest land," see § 29-3-33.

Setting aside, reservation, and dedication of sixteenth section and lieu lands for public parks and recreation areas, see § 29-3-87.

JUDICIAL DECISIONS

1. In general.

Effect of § 29-3-43 is to grant board of education option to purchase improvements or allow improvements to be removed, not to give lessee "right" to choose whether to remove improvements or "require" board of education to purchase them. Turney v. Marion County Bd. of Education, 481 So. 2d 770, 1985 Miss. LEXIS 2421 (Miss. 1985).

§ 29-3-45. Management of forest lands.

(1)(a) The board of education shall, by order placed upon its minutes, enter into an agreement with the State Forestry Commission for the general supervision and management of all lands classified as forest lands and of all timber or other forest products under the control of the board on sixteenth section lands, and lieu lands which have not been so classified. However, any school board may contract with private persons or businesses for the reforestation of sixteenth section lands and may contract with a registered forester to be paid from the 16th Section Interest Fund for a review of any forestry management decision or forestry practice including the sale of timber for sixteenth section forest land provided that any implementation of a forestry management decision or forestry practice to be taken as a result of the review described in this subsection shall be subject to the approval of both the commission and the Secretary of State. When such agreement has been entered into, no timber or other forest products shall be sold from any of the sixteenth section lands or lieu lands except such as have been marked or approved for cutting by the State Forestry Commission's employees. The Forestry Commission, or its designated employee, shall fix the minimum total cash price or minimum price per unit, one thousand (1,000) feet or other measure, at which the marked timber or other forest products shall be sold. The sales may be made for a lump sum or upon a unit price as in the opinion of the board may be calculated to bring the greatest return. Sales shall be made upon such other terms and conditions as to manner of cutting, damages for cutting of unmarked trees, damages to trees not cut and other pertinent matters as the board of education shall approve.

(b) The State Forestry Commission shall have the sole authority and control in scheduling of all cutting and harvesting of timber or other forest products when such timber stands or other forest products are determined by the State Forestry Commission to be economically ready for cutting and harvesting.

(c) Should a school board disagree with the Forestry Commission concerning the time of cutting and harvesting, the board may make an appeal to the Forestry Commission at a regular monthly scheduled meeting of the commission. If the school board is not satisfied after the appeal to the commission, the board may then appeal to the Secretary of State who will make the final decision as to the time for cutting and harvesting. In the event that the local school board is divested of its management authority under subsection (3) hereof, the Secretary of State after due consultation with the Forestry Commission shall retain the right to make final decisions concerning the management and sale of timber and other forest products.

(d) It is hereby made the duty of the State Forestry Commission, from time to time, to mark timber which should be cut from the lands, to determine what planting, deadening or other forestry improvements should be made, giving due consideration to food and habitat for wildlife, and to report to the appropriate board of education. The State Forestry Commission and the board of education shall supervise the cutting of any timber or harvesting of other forest products sold from the lands herein designated and shall have authority to require any timber-cutting operations on the lands to cease until proper adjustment is made, whenever it shall appear that timber is being cut in violation of the terms of the sale. In the event that it is desired to lease any of such lands or standing timber for turpentine purposes, such lease shall only cover such trees as the State Forestry Commission shall designate, and the commission through its employees shall approve the number of faces, method of chipping and boxing of such timber, and shall fix a minimum total cash price or minimum price per unit.

(e) No sale of any timber, turpentine or other forest products lease shall be made until notice of same shall have been published once a week for three (3) consecutive weeks in at least one (1) newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for the sale, and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such county, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in such county and, in addition thereto, by posting a copy of such notice for at least twenty-one (21) days next preceding such sale at three (3) public places in such county.

(f) Notwithstanding the above provision pertaining to the sale of any timber, turpentine or other forest products, in the event that timber must be cleared from an existing road or existing utility right-of-way, the public notice requirement may be waived. Prior to waiver of the public notice requirement, the State Forestry Commission must make a finding that, due to the small area of timber to be cleared, a public notice sale would not be in the best interest of the local board of education. If the State Forestry Commission makes such a finding, then it shall set the value of the timber to be paid to the local board of education by the party requesting the timber be removed.

(g) Provided, however, in the case of damage by fire, windstorm or other natural causes which would require immediate sale of the timber, because the time involved for advertisement as prescribed herein would allow decay, rot or destruction substantially decreasing the purchase price to be received had not such delay occurred, the advertisement provisions of this section shall not apply. The local board of education, with a written recommendation from a designated employee of the State Forestry Commission filed in the minutes of the local board of education, shall determine when immediate sale of the timber is required. When the board of education shall find an immediate sale necessary for the causes stated herein, it shall, in its discretion, set the time for receipt of bids on the purchase of the timber, but shall show due diligence in notifying competitive bidders so that a true competitive bid shall be received.

(2)(a) A local board of education having control of the sixteenth section lands in the Hurricane Katrina Disaster of 2005 shall be granted emergency powers to take any and all actions of a reasonably prudent trustee acting under emergency conditions to recover damaged timber, prevent further loss or damage to timber, and to minimize economic loss. All such actions shall be taken in consultation with and shall be subject to the prior approval from the Secretary of State and the State Forestry Commission. The emergency powers shall be as follows:

(i) Contract with any individual or entity for management advice, sale of timber, clearing of damage to timber producing lands, transporting of timber, repairing access roads to timber lands, conducting aerial spraying, or taking any other type of action to prevent further loss of timber or diminution in value of existing timber as the result of the incident which necessitated the declaration of a natural disaster. In contracting with any individual or entity, the local board of education shall use its best efforts to ensure that all costs incurred are reasonable and that a fair price is received for all sales.

(ii) Enter into agreements with any individual, private company, or other governmental entities for the pooling of resources, or the sharing of costs so as to maximize the mitigation of loss and minimize the expense of mitigating the loss of timber.

(iii) Apply for any state, federal, or private party grant or nonrepayable funds to cover costs associated with emergency management contracts, sale timber, including loss for diminution of value, transporting of timber, replanting of timber, repairing access roads to timber, conducting aerial spraying, or reimbursement for any other action taken to prevent further timber damage, as well as mitigating the loss of funds due to damage.

(b) The emergency powers granted herein shall be for a period of one (1) year from the date of designation as a disaster area due to Hurricane Katrina. The emergency powers may be extended for one (1) additional one-year period upon prior written approval from the Secretary of State.

(c) The emergency powers shall also apply to the management of timber by the Secretary of State pursuant to subsection (3) of this section.

(d) In the event a local board of education is unable to acquire the services of the State Forestry Commission or the Secretary of State to meet an immediate need to salvage, remove or take other appropriate action on damaged timber, the local board of education shall unilaterally be granted the authority to take such actions as necessary regarding the management or sale of timber or other forest products.

(e) In exercising emergency powers, a local board of education or the Secretary of State shall exercise the general powers of a trustee with the same general restrictions and general liabilities of a trustee and shall exercise the care and skill of an ordinary prudent person to protect the beneficiaries of the trust under such emergency circumstances.

(f) Any contractor with a local board of education or the Secretary of State shall be entitled to rely on representations by such board of education or the Secretary of State as to who has authority to enter contracts for the management or sale of timber or other forest products, and reliance on such representations shall not be grounds for voiding any contract.

(3)(a) In the event that any member of a local board of education may have a personal interest, either direct or indirect, in the decisions regarding the management or sale of timber or other forest products or in a contract for the sale of timber or other forest products from sixteenth section school lands under the jurisdiction and control of the board, then the board of education shall automatically be divested of all authority and power to manage and sell timber or other forest products on sixteenth section lands under its control and jurisdiction. The divestiture shall extend for the period of service, and for one (1) year thereafter, of the board member having a direct or indirect personal interest in the sale or decision to sell timber or other forest products.

(b) During the time in which any local board of education may be divested of authority and power to manage and sell timber and other forest products, such authority and power shall be vested in the Secretary of State, as supervisory trustee of sixteenth section lands. Upon the appointment or election of a member of a local board of education who may have such an appointment or election of a member of a local board of education who may have such an interest in decisions and contracts regarding the management and sale of timber or other forest products, the board of education shall immediately notify the Secretary of State in writing. Likewise, the board shall give written notification to the Secretary of State within thirty (30) days prior to the expiration of any such divestiture period. Any contractor with a local board of education or the Secretary of State shall be entitled to rely on representations by such board or the Secretary of State as to who has authority to enter contracts for the management or sale of timber or other forest products, and reliance on such representations shall not be grounds for voiding any contract.

(c) The laws providing for the management and sale of timber and other forest products by local boards of education shall apply to the management and sale of timber and other forest products by the Secretary of State. The Mississippi Forestry Commission shall provide the Secretary of State with advice and services in the same manner as provided to local boards of education.

(d) The Secretary of State shall be paid all monies derived from the sale of timber or other forest products and shall promptly forward the same to the superintendent of education for such school district with instructions for the proper settlement, deposit and investment of the monies. Such local school board shall reimburse the Secretary of State for all direct costs relating to the management and sale of timber or other forest products, and in the case of a sale of timber or other forest products, the Secretary of State may deduct such direct cost from the proceeds of sale. The Secretary of State shall furnish an itemized listing of all direct cost charged to the local school district.

HISTORY: Codes, 1942, § 6598-12; Laws, 1958, ch. 303, § 12; Laws, 1966, ch. 420, § 1; Laws, 1978, ch. 525, § 24; Laws, 1986, ch. 511, § 1; Laws, 1996, ch. 530, § 1; Laws, 2001, ch. 361, § 1; Laws, 2005, 5th Ex Sess, ch. 3, § 1; Laws, 2009, ch. 505, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. In (1)(c), "In the event that the local school board is divested" was substituted for "in the event, the local school board is divested." The Joint Committee ratified this correction at its August 5, 2008, meeting.

Cross References — Jurisdiction and duties of boards of supervisors generally, see § 19-3-41.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Setting aside, reservation, and dedication of sixteenth section and lieu lands for public parks or recreation areas, see § 29-3-87.

Duties and powers of state forestry commission, see § 49-19-3.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 29-3-93.

1. In general.

This section [Code 1942, § 6598-12], requiring boards of supervisors to enter into agreements with the state forestry commission with respect to the management of forest lands and the regulation of the sale and cutting of timber therefrom is, constitutional. State ex rel. Patterson v. Buffalo Wood, Inc., 204 So. 2d 853, 1967 Miss. LEXIS 1218 (Miss. 1967).

No delay on the part of the land commissioner in classifying 16th section and lieu lands either as forest lands or otherwise affects the mandatory requirement of Code 1942, § 6598-12 that the board of supervisors shall enter into agreements with the state forestry commission relative to the management of forest lands and the regulation of and sale of timber from such lands, and a demurrer to a bill of complaint filed by the state of Mississippi against the members of the board of supervisors of Amite county, the sureties on their bonds, and the proposed purchaser of timber should have been overruled. State ex rel. Patterson v. Buffalo Wood, Inc., 204 So. 2d 853, 1967 Miss. LEXIS 1218 (Miss. 1967).

2.-5. [Reserved for future use.]

6. Under former § 29-3-93.

The legislature has never authorized a lease of sixteenth section lands for the purpose of growing commercial timber thereon. Bernard v. Board of Sup'rs, 216 Miss. 387, 62 So. 2d 576, 1953 Miss. LEXIS 649 (Miss. 1953).

A purchaser from one who purchased 16th section timber from a board of supervisors is presumed under the law to have known that the board was selling the timber as agent of the state which held it as trustee for the educable children of the township, and was in duty bound not to sell the same for a grossly inadequate consideration virtually amounting to a donation in violation of § 95 of the State Constitution. State ex rel. Kyle v. Dear, 209 Miss. 268, 47 So. 2d 150, 1950 Miss. LEXIS 387 (Miss. 1950).

Grossly inadequate consideration for the sale of 16th section timber is shown prima facie by the fact that only $500 was received for the timber and th at at a subsequent sale, not too remote, and where no substantial change in the conditions or circumstances in the meantime is shown to have intervened, the property brought the sum of $4,000 in a resale to a purchaser of experience in valuing the quantity and quality of timber. State ex rel. Kyle v. Dear, 209 Miss. 268, 47 So. 2d 150, 1950 Miss. LEXIS 387 (Miss. 1950).

The members of the board of supervisors, and the sureties on their official bonds, are not liable for the losses occasioned by their failure to exercise proper care in ascertaining the reasonable value of 16th section timber sold by them, since they are exercising a judicial function in determining the price at which the same should be sold. State ex rel. Kyle v. Dear, 209 Miss. 268, 47 So. 2d 150, 1950 Miss. LEXIS 387 (Miss. 1950).

Board of Supervisors has no right to sell Sixteenth Section timber for grossly inadequate price, and this is true even though its action in so doing is due to negligence rather than fraud or bad faith. State ex rel. Kyle v. Dear, 209 Miss. 268, 47 So. 2d 150, 1950 Miss. LEXIS 387 (Miss. 1950).

Board of Supervisors is prohibited by § 95 of State Constitution to make a sale of Sixteenth Section timber under authority of this section for such a grossly inadequate price as to virtually amount to a donation thereof. State ex rel. Kyle v. Dear, 209 Miss. 268, 47 So. 2d 150, 1950 Miss. LEXIS 387 (Miss. 1950).

A board of supervisors, while acting as agent for the state which holds property as trustee, cannot bind the state by a sale of 16th section timber in violation of the Constitution, whether the action of the board is due to its negligence or due to fraud or collusion. State ex rel. Kyle v. Dear, 209 Miss. 268, 47 So. 2d 150, 1950 Miss. LEXIS 387 (Miss. 1950).

Timber on school lands held under a 99-year agricultural lease could not be sold by the board of supervisors without the consent of the lessee, in view of the latter's right to "estovers"; and where board of supervisors sold such timber without lessee's consent, lessee was entitled to maintain a suit to enjoin removal of the timber. Hood v. Foster, 194 Miss. 812, 13 So. 2d 652, 1943 Miss. LEXIS 109 (Miss. 1943).

Timber deed executed by individual members of supervisors without order on minutes evidencing contract was void. Gilchrist-Fordney Co. v. Keyes, 113 Miss. 742, 74 So. 619, 1917 Miss. LEXIS 146 (Miss. 1917).

Purchaser of timber from lessee of 16th section, who subsequently purchased it from board of supervisors, was owner of timber notwithstanding sale of leasehold interest. Caston v. Pine Lumber Co., 110 Miss. 165, 69 So. 668, 1915 Miss. LEXIS 5 (Miss. 1915).

Warrant expressly covering all timber on tract cannot be restricted by implication from recitals in other parts of deed unless such intention is clearly expressed, and fact that deed shows on its face that part of land was 16th section does not prevent grantee's right to recover for breach of warranty. Southern Plantations Co. v. Kennedy Heading Co., 104 Miss. 131, 61 So. 166, 1913 Miss. LEXIS 14 (Miss. 1913).

Warranty of such corporation that it had the right to sell such timber, or if not would acquire it for benefit of buyer, held not void. Southern Plantations Co. v. Kennedy Heading Co., 104 Miss. 131, 61 So. 166, 1913 Miss. LEXIS 14 (Miss. 1913).

Corporation may lawfully acquire and dispose of timber on school land. Southern Plantations Co. v. Kennedy Heading Co., 104 Miss. 131, 61 So. 166, 1913 Miss. LEXIS 14 (Miss. 1913).

Supervisors may permit purchaser to enter school land to remove timber, but cannot grant him an indefinite length of time to do so. L. N. Dantzler Lumber Co. v. State, 97 Miss. 355, 53 So. 1, 1910 Miss.

LEXIS 286 (Miss. 1910), limited, Merrill Engineering Co. v. Capital Nat'l Bank, 192 Miss. 378, 5 So. 2d 666, 1942 Miss. LEXIS 5 (Miss. 1942); State ex rel. Attorney Gen. v. Blodgett, 110 Miss. 768, 70 So. 710, 1915 Miss. LEXIS 91 (Miss. 1915); State ex rel. Attorney Gen. v. Dunnam, 67 So. 461 (Miss. 1915).

The policy to preserve for the support of township schools the timber on sixteenth section lands is indicated by enactment of statutes providing that no timber shall be cut or used by the lessees of such lands except for fuel and necessary repairs and improvements. Hundley v. Mount, 16 Miss. 387, 1847 Miss. LEXIS 33 (Miss. 1847).

§ 29-3-47. Forestry escrow fund.

For its services the state forestry commission shall be entitled to receive its actual expenses incurred in the discharge of the duties herein imposed. In order to provide funds with which to pay for the general supervision and sale of forest products, fifteen percent (15%) of all receipts from the sales of forest products shall be placed by the board in a forestry escrow fund and reserved to pay for work performed by the state forestry commission. Such payments shall be equal to the actual expenses incurred by the commission as substantiated by itemized bills presented to the board.

Money in the forestry escrow fund may be used to pay for any forestry work authorized during the period of the agreement and shall not be subject to lapse by reason of county budget limitations.

In each school district having need of tree planting and timber stand improvement, the board of education is authorized to place additional amounts in the forestry escrow fund to reimburse the state forestry commission for actual expenses incurred in performing this work, or to pay for any work done under private contract under the supervision of said commission. Such additional amounts may be made available from forest products sales receipts, funds borrowed from the sixteenth section principal fund as is provided for in Section 29-3-113, or any other funds available to the board of education excluding minimum foundation program funds. Expenditures from the forestry escrow fund for tree planting, timber stand improvement, and other forestry work will be limited to payment for work recommended by the forestry commission and agreed to by the board of education.

When it becomes evident that the amount of money in the forestry escrow fund is in excess of the amount necessary to accomplish the work needed to achieve the goals set by the board of education and the forestry commission, the state forestry commission shall advise said board to release any part of such funds as will not be needed, which may then be spent for any purpose authorized by law.

HISTORY: Codes, 1942, § 6598-13; Laws, 1958, ch. 303, § 13; Laws, 1978, ch. 525, § 25, eff from and after July 1, 1978.

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Duties and powers of state forestry commission generally, see § 49-19-3.

OPINIONS OF THE ATTORNEY GENERAL

Forestry escrow funds are authorized to be expended only for those purposes designated in Section 29-3-47. Robbins, May 17, 1996, A.G. Op. #96-0296.

§ 29-3-49. Agreements for timber improvement.

It shall be the duty of the State Forestry Commission, in the manner provided in Section 29-3-45, to enter into agreements for timber improvement purposes with the board of education upon the request of the board. The contract shall provide for the carrying out of a long-term program of timber improvement, including any or all of the following: The deadening of undesirable hardwoods, the planting of trees, the cutting and maintaining of fire lanes, and the establishment of marked boundaries on all lands classified as forest lands in the agreements, which provide for the reimbursement of all current costs incurred by the State Forestry Commission and the carrying out of the duties required by such agreements. In the alternative, the commission, in its discretion, may have the option to contract with a private contractor, subject to the approval of the board, to perform this work under the supervision of the commission. Payment of the reimbursements as hereinabove set forth to the Forestry Commission, or of compensation due under any such contract with private contractors shall be made upon presentation of itemized bills by the commission or the private contractors, as the case may be, and may be made out of any sixteenth section funds to the credit of, or accruing to, any school district in which such work shall be done, or out of any other funds available to such district, excluding minimum foundation program funds.

HISTORY: Codes, 1942, § 6598-14; Laws, 1958, ch. 303, § 14; Laws, 1975, ch. 436; Laws, 1978, ch. 525, § 26; Laws, 2009, ch. 505, § 2, eff from and after July 1, 2009.

Cross References — Jurisdiction and powers of board of supervisors generally, see § 19-3-41.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Setting aside, reservation, and dedication of sixteenth section and lieu lands for public parks or recreation areas, see § 29-3-87.

Duties and powers of state forestry commission generally, see § 49-19-3.

§ 29-3-51. Determination of lands subject to lease.

The chancery courts have jurisdiction to determine, on bill or petition, what lands are or may be subject to lease under provisions of this chapter; but all sixteenth sections, or lands taken in lieu thereof, are presumed to be so subject unless the contrary be shown clearly.

HISTORY: Codes, 1930, § 6773; 1942, § 6613; Laws, 1924, ch. 283; Laws, 1930, ch. 278.

Cross References — Sale of sixteenth sections or lieu lands for use as industrial parks, see § 29-3-29.

Confirmation of sixteenth section leases, see §§ 29-3-103, 29-3-105.
Leasing of penitentiary lands for agricultural purposes, see §§ 47-5-64 et seq.

JUDICIAL DECISIONS

1. In general.

This section does not vest power in the chancery court to make a lease of sixteenth section lands, since such power is vested by § 211 of the Constitution in the legislature, and the legislature has already enacted laws pursuant to such constitutional provision. Smith v. McCullen, 195 Miss. 34, 13 So. 2d 319, 1943 Miss. LEXIS 119 (Miss. 1943).

Chancery court had jurisdiction under this section to entertain a suit by school trustees of a township, seeking the court's approval of a proposed but unexecuted mineral lease of sixteenth section land, to determine whether such land was subject to lease by the proper authorities under any existing law, and, particularly, whether such land could be leased by the county supervisors under § 6762 (Code of 1930), and to determine the validity of ch 150, Laws, 1942 (§ 6600, Code of 1942), amending such section. Smith v. McCullen, 195 Miss. 34, 13 So. 2d 319, 1943 Miss. LEXIS 119 (Miss. 1943).

§ 29-3-52. Prima facie validity of leases executed and recorded in substantial conformity with law.

Any lease of sixteenth section lands, or lands granted in lieu thereof, including leases and any renewal, replacement or extension of such leases granted pursuant to Section 29-3-99, executed and recorded in substantial conformity with the applicable provisions of this chapter shall be deemed to be prima facie valid, and defects in ministerial or procedural acts alone shall not affect the validity of any such lease, as far as a bona fide purchaser or encumbrancer for value of any such lease is concerned. Any such purchaser or encumbrancer shall be entitled to rely upon the validity of any such lease insofar as the interest of the state or any political subdivision thereof, the public, or any school district is concerned.

Nothing in this section shall prohibit any party from challenging the validity of any lease on the grounds of inadequacy of consideration given for the lands involved in the lease.

HISTORY: Laws, 1978, ch. 525, § 51; Laws, 1992, ch. 486 § 3, eff from and after passage (approved May 7, 1992).

JUDICIAL DECISIONS

1. In general.

The State, acting through its school board, could not be equitably estopped under §§ 29-3-7 and 29-3-52 from asserting inadequacy of consideration in a lease of sixteenth section school lands. Hill v. Thompson, 564 So. 2d 1, 1990 Miss. LEXIS 531 (Miss. 1990).

A lease of school trust land was voidable for inadequate consideration as violative of the donation clause of Article IV, § 95 of the Mississippi Constitution where the consideration paid for the lease was so grossly inadequate as to shock the conscience and to defeat any challenge even of one otherwise claiming the status of a bona fide purchaser; the inadequate consideration was not a hidden title defect but was a matter of public record, so openly blatant as to put any purchaser on notice of a possible defect in the trustee's title where the tax assessments of the city and the county gave notice of value that should have suggested that a far higher rental was required to meet the constitutional mandate of non-donation, and the appraiser's report stated that only a nominal value was used. As a matter of law, a one-time gross sum payment which amounted to $.07575 per year consideration was grossly inadequate and amounted to a donation of public lands prohibited by the constitution and trust law. Mere compliance with statutory formalities and procedures did not vitiate substantive violation of constitutional prohibitions. The case would be remanded to the school district board of trustees for a new determination of the present rental value by a competent appraiser under the 1978 Reform Act. While the public policy of making all reasonable efforts to keep sixteenth section lands leased so that they might be developed and produce revenue from taxation is not an unworthy goal, and this policy may have influenced past officials in leasing sixteenth section lands for nominal rentals, its emphasis must not overshadow constitutional mandates. Hill v. Thompson, 564 So. 2d 1, 1990 Miss. LEXIS 531 (Miss. 1990).

RESEARCH REFERENCES

Law Reviews.
1989 Mississippi Supreme Court Review: Sixteenth Section School Land. 59 Miss. L. J. 920, Winter, 1989.

§ 29-3-53. Term lessee defined.

Any lease executed pursuant to this chapter shall inure to the benefit of the lessee therein named, his heirs and assigns, and in case the lessee be a corporation, to such lessee and its assigns.

HISTORY: Codes, 1930, § 6785; 1942, § 6628; Laws, 1926, ch. 318; Laws, 1930, ch. 278.

§ 29-3-54. Posting of leased land against trespassers.

Any leaseholder of sixteenth section land, or land granted in lieu thereof, shall be authorized to post such land against trespassers; provided that such posting shall not prohibit the inspection of said lands by individuals responsible for the management or supervision thereof acting in their official capacity. In the event hunting or fishing rights have been leased on lands classified as forest land, the holder of such rights and the state forestry commission shall be authorized to post such land against trespassers.

HISTORY: Laws, 1978, ch. 525, § 53, eff from and after July 1, 1978.

Cross References — Definition of "forest land," see § 29-3-33.
Division of damages to land located in two school districts which has been trespassed upon, see § 29-3-129.
Trespass generally, see § 95-5-27.

§ 29-3-55. Repealed.

Repealed by Laws, 1978, ch. 525, § 55, eff from and after July 1, 1978.
§ 29-3-55. [Codes, 1942, § 6598-17; Laws, 1958, ch. 303, § 17]

Editor's Notes — Former § 29-3-55 provided for the terms and conditions of leases, and execution thereof.

§ 29-3-57. Superintendent of education to docket leases and collect rentals.

The superintendent of education shall keep a current docket as to the expiration date of all leases on sixteenth section lands; likewise, he shall keep a correct current docket upon the existing leases or any extensions thereof as to the amounts and time of payment of rentals provided for by such lease. It shall be the duty of the superintendent of education to collect promptly all rentals due and all principal and interest due upon loans and investments of sixteenth section funds. Upon a sixty (60) day default in payment of any rentals according to the terms of such lease, the lease shall be declared terminated unless the board of education finds extenuating circumstances were present, and the board shall inaugurate the proper legal proceedings to terminate such lease. The superintendent of education, with the approval of the board of education, may employ an attorney or other person to aid in collecting any such funds when in his opinion the same is necessary, and may pay reasonable compensation therefor out of funds collected, not to exceed in any case twenty-five percent (25%) of the amount actually collected. It shall be the duty of the superintendent of education to supervise generally the administration of all sixteenth section lands within his jurisdiction. In all cases where leases of sixteenth section lands are entered into, it shall be the duty of the superintendent of education to take the notes of the lessees for the rents provided by said lease and turn them over to the county depository and attend to their collection. In the case of the leasing of agricultural lands, the school district shall have the same rights and remedies for the security and collection of such rent as are given by law to agricultural landlords.

HISTORY: Codes, 1942, § 6598-16; Laws, 1958, ch. 303, § 16; Laws, 1978, ch. 525, § 27, eff from and after July 1, 1978.

Cross References — Definitions of “board of education” and “superintendent of education,” see § 29-3-1.1.

Agricultural land defined, see § 29-3-33.

Superintendent of education and his duties generally, see §§ 37-3-9, 37-3-11.

JUDICIAL DECISIONS

1. In general.

A 25-year lease of 150 acres of sixteenth section land for an annual rent of $37.50 from county superintendent of education to himself was void on its face, and a subsequent three year lease of the same land from the county superintendent to another for an annual rent of $900 showed on its face that the lease to the county superintendent was for a grossly inadequate consideration amounting to a donation of public property to a private individual; County board of supervisors, the surety on their bonds, and the county superintendent were liable for the difference between the $900 annual rental and the $37.50 annual rental for each of the three years of the second lease, plus legal interest, rather than its continuation for the remainder of the 25-year lease period with damages prospectively figured for each year of its future existence. Holmes v. Jones, 318 So. 2d 865, 1975 Miss. LEXIS 1456 (Miss. 1975).

OPINIONS OF THE ATTORNEY GENERAL

Any lease the hospital board and school board enter into for the lease of sixteenth Section Lands should comport with the requirements of Sections 29-3-63, 29-3-65 and 29-3-57. Hurt, November 7, 1996, A.G. Op. #96-0722.

§ 29-3-59. Proceeds of leases.

All rentals, or other revenue payable under any leases executed pursuant to this chapter shall be paid to and collected by the superintendent of education and shall be credited to the township school fund and used and expended in the same manner and subject to the same restrictions as provided by law in the case of other money belonging to such funds. Any superintendent of education receiving any such revenue shall make annual report thereof to the state superintendent of education.

HISTORY: Codes, 1930, § 6784; 1942, § 6625; Laws, 1926, ch. 318; Laws, 1930, ch. 278; Laws, 1978, ch. 525, § 28, eff from and after July 1, 1978.

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Investment and lending of school funds, see § 29-3-113.

§ 29-3-61. Repealed.

Repealed by Laws, 1978, ch. 525, § 55, eff from and after July 1, 1978.

§ 29-3-61. [Codes, 1930, § 6759; 1942, § 6597; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1946, ch. 443, § 1; Laws, 1948, ch. 497, § 1; Laws, 1961, 2nd Ex Sess ch. 2, § 1; Laws, 1962, ch. 364, § 1; Laws, 1968, ch. 411, § 1]

Editor's Notes — Former § 29-3-61 provided for lease of lands for industrial development.

§ 29-3-63. Right to re-lease or to extend existing lease; minimum annual rental.

(1) The holder of a lease of sixteenth section or lieu land, at the expiration thereof, shall have a prior right, exclusive of all other persons, to re-lease or to extend an existing lease as may be agreed upon between the holder of the lease and board of education subject to the classification of said land. Provided, however, no holder of a lease of sixteenth section land classified as agricultural land shall have any priority rights in extending his lease contract, except as otherwise provided in Section 29-3-81. Provided, however, the compensation on an annual basis shall be the fair market rental of the land excluding buildings and improvements made on such land by the lessee, the title to which is not held in trust for the public schools, but in no event shall the compensation be less than the minimum amounts prescribed in subsection (2) of this section.

(2) The board of education shall not lease or extend a lease on land classified as industrial or commercial at an annual rental less than five percent (5%) of the current market value, exclusive of buildings or improvements not

owned by the school district. Such minimum acceptable percentage shall not apply to land classified as farm-residential, residential, recreational and other land; however, fair market rental will apply to those lands as determined by appraisal, comparative analysis or comparison with the private sector.

(3) The prior right to re-lease or extend an existing oil, gas and mineral lease, or any part thereof, granted under this section shall be conditioned upon the existence of production of oil, gas or other minerals thereunder in paying quantities, or the existence of a well capable of such production, or the existence of drilling or reworking operations at the time of lease expiration. Provided, however, that said lease may, in the discretion of the board of education, be extended only as to the lands included in a unit or units as defined by the appropriate agency having jurisdiction over said unit or units. The replacement lease shall be upon such terms and conditions as may be agreed upon between the holder of the lease and the board of education, provided that the rental and royalty provisions shall not be less than the rental and royalty provisions as set out in the expired lease and the primary term shall not exceed the limitations in Section 29-3-99. Bonus payment for the replacement lease shall be consistent with the requirements set out in Sections 29-3-65 with respect to oil, gas and mineral leases.

(4) Where used in this section and Section 29-3-65, the term "oil and gas lease" or "oil, gas and mineral lease" shall include all leases originally executed pursuant to Section 29-3-99.

(5) The right to re-lease an oil, gas and mineral lease provided in subsection (3) above extends to oil, gas and mineral leases which have already expired as of May 7, 1992, subject to an accounting for production from the date of lease expiration to the date of the replacement lease authorized herein.

HISTORY: Codes, 1942, § 6597-03; Laws, 1948, ch. 497, § 4; Laws, 1956, ch. 290; Laws, 1978, ch. 525, § 29; Laws, 1986, ch. 505; Laws, 1992, ch. 486 § 4, eff from and after passage (approved May 7, 1992).

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Definitions of land classifications, see § 29-3-33.

Appraisal of oil, gas, and mineral leases executed pursuant to this section, see § 29-3-65.

Leases for oil, gas and mineral exploration, mining, production and development, see § 29-3-99.

JUDICIAL DECISIONS

1. In general.

As trustees for land held for benefit of public schools, members of School Board are bound in management of all matters of trust to act in good faith and employ such vigilance, sagacity, diligence and prudence as in general prudent persons of discretion and intelligence in like matters employ in their own affairs, which includes duty to obtain rental fees for leased land in satisfaction of statutory minimums. Broadhead v. Bonita Lakes Mall, Ltd. Pshp., 702 So. 2d 92, 1997 Miss. LEXIS 531 (Miss. 1997).

Statute requiring county board of education and county board of supervisors to obtain statutory minimum percentage of market value for any leases of land held by boards in trust for public schools did not apply to parcel which had already been leased but which was released back to boards to allow them to include parcel in lease of adjacent land for development of shopping center. Broadhead v. Bonita Lakes Mall, Ltd. Pshp., 702 So. 2d 92, 1997 Miss. LEXIS 531 (Miss. 1997).

A chancellor's ruling that the 25-year limitation of Mississippi Constitution Article VIII § 211 had no application to an oil or gas lease, which was based on the economic reality that a mineral lessee must be allowed to maintain a lease for an indefinite period of time to maximize profits and was an attempt to redress perceived economic hardships with equitable principles, would be reversed since § 211 clearly limits sixteenth section land leases (including mineral leases) to a maximum term of 25 years, and it the judiciary's responsibility to interpret the law, not institute economic policies. Should the perceived economic hardships of § 211 be real, the onus is upon the legislature to redress such economic inadequacies, and Mississippi Constitution Article XV, § 273 provides the exclusive means for amendment. Additionally, § 29-3-63, which provides the holder of a lease of 16th section land with a prior right, exclusive of all other persons, to re-lease or extend an existing lease, diminishes the perceived harsh consequences which might result from the enforcement of § 211 against all oil, gas and mineral leases of 16th section land. Chevron U.S.A. v. State, 578 So. 2d 644, 1991 Miss. LEXIS 223 (Miss. 1991).

OPINIONS OF THE ATTORNEY GENERAL

Under Section 29-3-63(2), neither the City, nor the Board of Supervisors, is entitled to an exemption from the payment of "adequate compensation" for the rental of sixteenth section lands. Hill, March 8, 1995, A.G. Op. #95-0040.

Except for uses by the public schools and for use as public parks, pursuant to Section 29-3-87, no governmental agency is entitled to any type of so-called "special consideration" in leasing sixteenth section lands. All sixteenth section land leases to governmental entities are subject to the same leasing restrictions and provisions as are applicable to any other individual or entity. Hill, March 8, 1995, A.G. Op. #95-0040.

Land that is presently classified as forest land which is to be leased to a county school district would require a reclassification of land use as is found in Sections 29-3-33 and 29-3-39. In evaluating the appropriate rental compensation to the city school district, the rental rate must comply with 29-3-63(2). Hilbun, August 23, 1995, A.G. Op. #95-0567.

Any lease the hospital board and school board enter into for the lease of 16th Section Lands should comport with the requirements of Sections 29-3-63, 29-3-65 and 29-3-57. Hurt, November 7, 1996, A.G. Op. #96-0722.

Sixteenth section lands may not be leased to churches, cemetery associations or senior citizens, or to anyone else, for less than fair market value. Bozeman, March 19, 1999, A.G. Op. #99-0113.

In connection with the lease by a school district of agricultural land to a developer under a residential development lease contract, the district may not reclassify a swamp and shallow lake on the property to "recreation" or "other" and lease that land for one dollar per acre because of the board's obligation to the board of education as trustee to obtain the highest and best return possible from sixteenth section land. Chaney, Nov. 25, 2002, A.G. Op. #02-0629.

A school board has the obligation as trustee to obtain the highest and best return possible from the sixteenth section land. Pickett, Nov. 14, 2003, A.G. Op. 03-0600.

RESEARCH REFERENCES

Law Reviews.

1989 Mississippi Supreme Court Review: Sixteenth Section School Land. 59 Miss. L. J. 920, Winter, 1989.

§ 29-3-65. Appraisal of lands; adjustment of rental amounts.

One (1) year prior to the date, when any such lands, not subject to competitive bid procedures, shall become available for lease, the board of education shall appoint a competent appraiser to appraise the land and report to the board his recommendation for the fair market rental amount. The board shall then determine whether the same be a reasonable amount, and shall grant the lease pursuant to Section 29-3-63. Provided that in the event any such land becomes available for lease prior to July 1, 1979, an appraisal shall be required prior to the granting of said lease.

The board of education may use rent escalation clauses or other such devices to adjust rental amounts during the lease term. Owners of leaseholds under a lease granted prior to July 1, 1978, which have improvements constructed thereon, shall not be charged for such improvements in successive lease periods unless the lease contract clearly specifies otherwise. The cost of the appraisal under this section shall be paid from any available sixteenth section school funds or other school funds of the district.

The appraisal pertaining to renewal oil, gas and mineral leases executed pursuant to Section 29-3-63 may be made either before or after the expiration of the original lease and shall appraise the fair market value for the bonus to be paid for a renewal lease containing the terms and conditions agreed upon by the holder of the lease and the board of education.

HISTORY: Codes, 1942, § 6597-04; Laws, 1946, ch. 443, § 4; Laws, 1948, ch. 497, § 5; Laws, 1978, ch. 525, § 30; Laws, 1992, ch. 486 § 5, eff from and after passage (approved May 7, 1992).

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Re-lease and extension of existing oil, gas, or mineral leases on sixteenth section land, see § 29-3-63.

JUDICIAL DECISIONS

1. In general.

Substantial evidence supported chancellor's findings that competent appraisals had been performed for land held in trust by county board of education and county board of supervisors, and that division of property into two parcels for leasing for shopping mall development was not significant change that would require separate appraisal of one of those tracts, regardless of chancellor's mistaken belief that one of parcels was wholly part of original separate tract before property had been combined; competent and reliable update appraisal had been done on combined tract, which was then divided, and lease provided board of education with same revenue that it would have gotten had tract not been divided. Broadhead v. Bonita Lakes Mall, Ltd. Pshp., 702 So. 2d 92, 1997 Miss. LEXIS 531 (Miss. 1997).

The Board of Education has the final authority, duty and responsibility to determine the reasonable annual rental amount to be assessed on sixteenth section lands, and is not bound by a percentage of fair market sale value or fair market rental value of the land; the board is simply required to lease the sixteenth section land for the fair rental value thereof in order for the Board to absolve itself of liability for inadequate rentals. Barber v. Turney, 423 So. 2d 133, 1982 Miss. LEXIS 2387 (Miss. 1982).

Where there were two suits pending against the superintendent of education for mandamus in connection with proposed lease of certain sixteenth section lands, one in the circuit court brought by the prospective lessees and the other in the Supreme Court brought by the county board of supervisors, the petition filed in the Supreme Court as an original suit would be dismissed because the appeal by the superintendent of education from the order of the board of supervisors directing the execution of the lease, pending before the Supreme Court, could not be cut off in this manner and, secondly, statutory jurisdiction of a mandamus suit against an official such as the superintendent of education was vested in the circuit court whose jurisdiction could not be circumvented by the filing of an independent and original case in the Supreme Court. State ex rel. Herring v. Cox, 285 So. 2d 462, 1973 Miss. LEXIS 1288 (Miss. 1973).

Where sixteenth section lands, partly located in the municipality, were leased by the board of supervisors to a nonprofit corporation, and under a contract with the power company, the nonprofit corporation undertook the construction of a reservoir on the leased premises and the power company was to use the water therein in connection with the operation of his electric generating plant, and the capitalized value of the leased land per acre upon the completion of the proposed improvements would greatly exceed the present capitalized value per acre, and there was no taking or removing of the soil from the premises, the construction of the reservoir would not constitute waste; nor did the fact that the leased lands were formerly used almost exclusively for agricultural purposes mean that it would be unlawful to construct the proposed improvements, or that the land should be used for commercial or residential purposes, especially in view of the fact that there had been no development of the lands, so that the chancellor's action in refusing to enjoin the construction of the proposed improvements and in confirming the lease was proper. Dodds v. Sixteenth Section Development Corp., 232 Miss. 524, 99 So. 2d 897, 1958 Miss. LEXIS 302 (Miss. 1958).

OPINIONS OF THE ATTORNEY GENERAL

Buildings and improvements not made by lessee and whose title is held in trust for public schools should be included in appraisal of sixteenth section land. Ward, July 16, 1992, A.G. Op. #92-0440.

The fair market rental value will include a comparative analysis with both the value of the land and the going rate of leases land in the private sector. See also Section 29-3-63. Pace, March 28, 1996, A.G. Op. #96-0153.

Any lease the hospital board and school board enter into for the lease of 16th Section Lands should comport with the requirements of Sections 29-3-63, 29-3-65 and 29-3-57. Hurt, November 7, 1996, A.G. Op. #96-0722.

RESEARCH REFERENCES

Law Reviews.

1989 Mississippi Supreme Court Review: Sixteenth Section School Land. 59 Miss. L. J. 920, Winter, 1989.

§ 29-3-67. Repealed.

Repealed by Laws, 1978, ch. 525, § 55, eff from and after July 1, 1978.

§ 29-3-67. [Codes, 1942, § 6597-06; Laws, 1946, ch. 443, § 12; Laws, 1948, ch. 497, § 7; Laws, 1961, 2d Ex Sess, ch. 2, § 3]

Editor's Notes — Former § 29-3-67 provided for use of gross sum rentals.

§ 29-3-69. Lease for ground rental.

The board of education may lease school trust lands classified as industrial, commercial, farm-residential, residential, recreational, catfish farming or other for a term not exceeding forty (40) years for a ground rental, payable annually. All leases, except leases of residential or farm-residential lands, made for a ground rental shall contain rent adjustment clauses or other such provisions requiring that the consideration for every lease of such lands shall be adjusted not less than once every ten (10) years from the date of the lease to reflect the current fair market rental value of the lands, exclusive of any improvements thereon. In leases of lands which are or which are to become residential or farm-residential land, the board of education may require a rent adjustment clause in which rents are to be adjusted, provided that such adjustments will not exceed the fair market rental value of the lands, exclusive of improvements thereon, as of the rental adjustment dates. If a rent adjustment clause is not contained in a lease of lands which are or which are to become residential or farm-residential land, the reasons for not including such clause in the lease shall be stated in the lease and entered on the minutes of the board. In the case of uncleared lands, the board of education may lease them for such short terms as may be deemed proper in consideration of the improvement thereof, with the right thereafter to lease or to hold on payment of a ground rental. The board of education may lease not more than three (3) acres of any such lands for a term not exceeding ninety-nine (99) years for a ground rental, payable annually, to any church having its principal place of worship situated on such lands, which has been in continuous operation at that location for not less than twenty-five (25) years at the time of the lease. The consideration for every lease of such lands to a church shall be renegotiated not less than once every twenty-five (25) years from the date of the lease to reflect the current fair market rental value of the lands, exclusive of any improvements thereon.

The board of education may, at any time, by agreement with any lessee of lands, except for lands classified as forest or agricultural, cancel an existing lease and execute a new lease contract on such land where major capital improvements have been made or for the purpose of facilitating the addition of major capital improvements, provided that the rental amount of such new lease shall not be less than the rental amount in the prior lease. The term of such new lease shall not exceed forty (40) years for a ground rental, payable annually, provided that prior to the execution of such new lease contract, the provisions of all applicable statutes setting forth the procedure and requirements for the execution of a lease for sixteenth section lands or lieu lands have been satisfied.

The board of education may find that in the interest of good trust management it may be necessary to grant in the original lease contract an option to renew any lease not subject to competitive bid procedures, for a term not to exceed twenty-five (25) years. If such a finding be made, it shall be entered on the minutes of the board and the option granted; provided that the execution of a new lease shall be required to effectuate the additional lease period and the provisions of all applicable statutes setting forth the procedure and requirements for the execution of a lease for sixteenth section lands or lieu lands have been satisfied.

Subleasing or assignment of any lease of school trust lands executed after July 1, 1978, shall only be allowed when provided in the lease contract or at the discretion of the board of education; provided that permission to sublease or assign shall not be arbitrarily withheld.

HISTORY: Codes, 1942, § 6597-02; Laws, 1948, ch. 497, § 3; Laws, 1977, ch. 478; Laws, 1978, ch. 525, § 31; Laws, 1984, ch. 322; Laws, 1987, ch. 487; Laws, 1995, ch. 623, § 2, eff from and after July 1, 1995.

Cross References — Constitutional provision concerning lease of sixteenth section lands reserved for support of schools, see Miss. Const. Art. 8, § 211.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Definitions of land classifications, see § 29-3-33.

JUDICIAL DECISIONS

1. In general.

Chancery court did not err by denying a lessee's motion for a declaratory judgment that a school board was precluded from adjusting rent based on the time restrictions in a lease for Sixteenth Section Land because the time restriction ran contrary to the statutory requirement that rent could be adjusted not less than once every ten years. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

Chancery court did not err by denying a lessee's motion for a declaratory judgment that a school board was precluded from adjusting rent based on the time restrictions in a lease because the parties could not agree to something less that what the statute required, that if the board did not reappraise the property within sixty days, then the statutory minimum rent adjustment was not only optional but also forfeited; such an agreement failed to comply with the statute and was void. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

Chancery court did not err by denying a lessee's motion for a declaratory judgment that a school board was precluded from adjusting rent based on the time restrictions in a lease because by adjusting the rent, the board was not making an untimely attempt to exercise a right conferred in the lease; rather, the board was carrying out a statutory mandate and, in the process, trying to ensure the annual rent, based on current fair-market value, was constitutionally adequate. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

School board's duty as trustee to assure adequate consideration is received based on current fair market value of the Sixteenth Section Land cannot be waived, even by mutual agreement in a contract; Sixteenth Section leases come with certain constitutional and statutory requirements, one being that rent adjustment at least once every ten years is a mutual, mandatory obligation and not a mere right to be exercised or waived. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

Chancery court did not err by denying a lessee's motion for a declaratory judgment that a school board was precluded from adjusting rent because to the extent the rent-adjustment clause in the lease reduced rent adjustment from a mutually binding obligation to a mere right the Board may only exercise by conducting an appraisal within narrow sixty-day windows spaced ten years apart or else it was waived, the restriction ran afoul of the statute's mandatory requirement. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

Mandatory rent adjustment is tied to the statutory duty imposed on a school board as trustee to assure adequate compensation is received for Marketplace's use of Sixteenth Section Land and the constitutional prohibition against the board's essentially donating trust land by virtue of receiving grossly inadequate consideration; because rent adjustment is part of the board's duty as trustee of Sixteenth Section Land, this duty cannot be contracted away, even by mutual agreement of the parties. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

Where sixteenth section lands, partly located in the municipality, were leased by the board of supervisors to a nonprofit corporation, and under a contract with the power company, the nonprofit corporation undertook the construction of a reservoir on the leased premises and the power company was to use the water therein in connection with the operation of its electric generating plant, and the capitalized value of the leased land per acre upon the completion of the proposed improvements would greatly exceed the present capitalized value per acre, and there was no taking or removing of the soil from the premises, the construction of the reservoir would not constitute waste; nor did the fact that the leased lands were formerly used almost exclusively for agricultural purposes mean that it would be unlawful to construct the proposed improvements, or that the land should be used for commercial or residential purposes, especially in view of the fact that there had been no development of the lands, so that the chancellor's action in refusing to enjoin the construction of the proposed improvements and in confirming the lease was proper. Dodds v. Sixteenth Section Development Corp., 232 Miss. 524, 99 So. 2d 897, 1958 Miss. LEXIS 302 (Miss. 1958).

OPINIONS OF THE ATTORNEY GENERAL

Buildings constructed on sixteenth section land which were designed for purposes of trade and for tenant alone constitute personalty and may be removed by tenant before expiration of lease. King, August 5, 1992, A.G. Op. #92-0553.

School board can, under Section 29-3-69, lease two acres of cemetery on land which has been part of churchyard for 99 years and part of cemetery for more than 50 years. Young, Jan. 6, 1993, A.G. Op. #92-0995.

Subleases and assignments of sixteenth section leases must meet the formal requirements for execution of a "sixteenth section lieu lands" lease provided for by Section 29-3-82(g) and must include the signatures of the President of the Board of Supervisors, the President of the Board of Education and the Superintendent of Education. Wallace, July 18, 1997, A.G. Op. #97-0375.

School district may not delete from the payment of annual rentals under a developmental lease property that has been platted once roads and utilities have been constructed for that portion of the property. Chaney, Nov. 25, 2002, A.G. Op. #02-0629.

Lessee of a developmental lease may contract to sublease cultivatable acres to a farmer on all of that portion of the property he has leased which is not being presently developed subject to the provision of Section 29-3-69 governing subleasing. Chaney, Nov. 25, 2002, A.G. Op. #02-0629.

This section indicates that sub-leasing or assignment of any lease is permissible if it is provided for in the lease contract or at the discretion of the board of education. The statute does not provide for partial assignments. Cheney, Sept. 24, 2004, A.G. Op. 04-0457.

RESEARCH REFERENCES

Law Reviews.
1984 Mississippi Supreme Court Review: Property. 55 Miss L. J. 135, March, 1985.

1989 Mississippi Supreme Court Review: Sixteenth Section School Land. 59 Miss. L. J. 920, Winter, 1989.

§ 29-3-71. Leaseholds subject to taxes.

Sixteenth section lands reserved for the use of schools, or lands reserved or granted in lieu of or as a substitute for the sixteenth sections, shall be liable, after the same shall have been leased, to be taxed as other lands are taxed during the continuance of the lease, but in case of sale thereof for taxes, only the title of the lessee or his heirs or assigns shall pass by the sale.

HISTORY: Codes, 1942, § 6597-07; Laws, 1946, ch. 443, § 14; Laws, 1948, ch. 497, § 8.

Cross References — Liability for drainage taxes, see § 29-3-73.

JUDICIAL DECISIONS

1. In general.
Presumption of lost grants was inapplicable due to the extensive chain of inferences required to so hold, i.e., that the missing deeds existed, that they conveyed fee simple, not leasehold, interests, and that the deeds were authorized by election according to statute. Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

Board of education may include in lease of sixteenth section land provision that lessee be responsible for payment of taxes and need not give lessee credit against rent for taxes paid by lessee. Turney v. Marion County Bd. of Education, 481 So. 2d 770, 1985 Miss. LEXIS 2421 (Miss. 1985).

OPINIONS OF THE ATTORNEY GENERAL

Leasehold interest in sixteenth section land is taxable and may be sold for failure to pay taxes; if leasehold interest was sold, county collected its taxes through that sale and there are no outstanding taxes, and taxes no longer accrue after purchase on remainder of leasehold interest. Smith, Oct. 2, 1992, A.G. Op. #92-0768.

Since a sale for taxes of a sixteenth section land leasehold is deemed to pay the taxes, personal liability therefor is extinguished by such sale, and there is no subsequent duty upon a chancery clerk or a tax assessor and collector to collect said unpaid taxes. Crawford, April 10, 1998, A.G. Op. #98-0199.

The value of a sixteenth section leasehold interest is taxed the same as other lands; that is, the leasehold is taxed as if the lessee holds the land in fee simple. Evans, May 9, 2003, A.G. Op. 02-0714.

§ 29-3-73. Lands liable for drainage taxes.

Where any school land, generally known as sixteenth sections, reserved for the use of schools, or land reserved or granted in lieu of or substituted for sixteenth sections lies within or partly within any drainage district created under the laws of this state, and will be benefited by such drainage district, such land so benefited shall be liable for its pro rata share of the costs, expenses, taxes, and assessments relating to said district as if owned by an individual, and shall be assessed accordingly, as other lands are assessed. But in case of a sale of such lands for such taxes or assessments, only the title of the lessee holding such lands under lease at the time of the sale shall pass by the sale.

Where such sixteenth section land, or land taken in lieu thereof, shall be held by any lessee, whether his lease shall have heretofore been acquired or shall hereafter be acquired, all such drainage taxes and assessments accruing thereon during such lease shall, in the discretion of the board of education, either be paid by the lessee, his grantees or assigns, or by the board of education, but the liability for such drainage taxes shall be fixed by the lease contract when said lands are leased. Where said lands have been leased by the superintendent of education, with the consent of the board of education in open session, and said lease contract provides that the lessee shall pay all such drainage taxes and assessments, and the lessee has actually entered upon and occupied said lands as lessee and is recognized as such, the school district in which said sixteenth section is located shall not be liable for such drainage taxes on account of the negligence of the secretary in failing to enter the order of the board approving said lease contract on its minutes. All such drainage taxes and assessments accruing on any such lands while the same are not leased shall be paid by the board of education of the school district in which such lands are situated, out of any sixteenth section funds belonging to the township in which such lands are located, which may be on hand at the time when such drainage taxes or assessments become due or which may be thereafter at any time collected or acquired. For the purpose of paying such drainage taxes and assessments, the board of education may borrow all money necessary to pay the same. When any such funds are borrowed as aforesaid, for the purposes aforesaid, the same shall be repaid out of the first sixteenth section fund thereafter derived from the sixteenth section lands so taxed and assessed.

HISTORY: Codes, 1930, § 6767; 1942, § 6607; Laws, 1924, ch. 267; Laws, 1940, ch. 182; Laws, 1978, ch. 525, § 32, eff from and after July 1, 1978.

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Tax levy by county board of supervisors to meet obligations of drainage district, see § 51-29-47.

Apportionment of drainage taxes, see § 51-31-63.

Yearly levy to meet bond obligations of drainage district, see § 51-31-65.

JUDICIAL DECISIONS

1. In general.

Board of education may include in lease of sixteenth section land provision that lessee be responsible for payment of taxes and need not give lessee credit against rent for taxes paid by lessee. Turney v.

Marion County Bd. of Education, 481 So. 2d 770, 1985 Miss. LEXIS 2421 (Miss. 1985).

Where payment of drainage taxes on school land was not discussed at time lease was made with county superintendent of education, nor referred to in oral contract of lease therefor, liability for payment of drainage taxes remained with board of supervisors, under statute imposing liability on lessee. Fighting Bayou Drainage Dist. v. Leflore County, 180 Miss. 223, 177 So. 6, 1937 Miss. LEXIS 102 (Miss. 1937).

Where county superintendent of education verbally leased school land to tenant for year 1932 and pursued same course for two succeeding years, lease did not relieve county of liability for drainage taxes under statute imposing liability on lessee. Fighting Bayou Drainage Dist. v. Leflore County, 180 Miss. 223, 177 So. 6, 1937 Miss. LEXIS 102 (Miss. 1937).

Fact that income obtained by county from school land for each of years involved in suit by drainage district to recover drainage taxes on school land had been spent for school purposes did not preclude recovery of taxes. Fighting Bayou Drainage Dist. v. Leflore County, 180 Miss. 223, 177 So. 6, 1937 Miss. LEXIS 102 (Miss. 1937).

County receiving percentage of revenues derived from unleased sixteenth section land situated wholly within another county held not required to pay same percentage of drainage tax levied on section. Murphy Bayou Drainage Dist. v. Humphreys County, 166 Miss. 690, 145 So. 350, 1933 Miss. LEXIS 322 (Miss. 1933).

The board of supervisors of the county in which an unleased sixteenth section is situated must pay the drainage taxes accruing on the sixteenth section land. Murphy Bayou Drainage Dist. v. Humphreys County, 166 Miss. 690, 145 So. 350, 1933 Miss. LEXIS 322 (Miss. 1933).

County boards of supervisors are merely agents of State for administering school trust imposed on sixteenth section land owned by State. Washington County v. Riverside Drainage Dist., 159 Miss. 102, 131 So. 644, 1931 Miss. LEXIS 14 (Miss. 1931).

County board of supervisors under 1924 statute held required to pay drainage assessments levied after enactment of statute on any sixteenth section land not leased but included within drainage district. Washington County v. Riverside Drainage Dist., 159 Miss. 102, 131 So. 644, 1931 Miss. LEXIS 14 (Miss. 1931).

County board of supervisors, prior to 1924, held not authorized to pay drainage taxes or local assessments on State-owned sixteenth section land impressed with school trust. Washington County v. Riverside Drainage Dist., 159 Miss. 102, 131 So. 644, 1931 Miss. LEXIS 14 (Miss. 1931).

Authority of county boards of supervisors to deal with sixteenth section land impressed with trust for schools must be conferred by statute. Washington County v. Riverside Drainage Dist., 159 Miss. 102, 131 So. 644, 1931 Miss. LEXIS 14 (Miss. 1931).

§ 29-3-75. Insurance.

Any leaseholder shall have the right at his own expense to keep his interest in the buildings and other improvements on the leased premises insured against loss or damage by fire and windstorm.

HISTORY: Codes, 1942, § 6597-08; Laws, 1946, ch. 443, § 15; Laws, 1948, ch. 497, § 9.

§ 29-3-77. Disposition of buildings.

Where buildings are located on sixteenth section lands which are not subject to an existing lease and such buildings have ceased to be used for the purpose for which they were constructed, the board of education may sell and dispose of such buildings pursuant to the procedures prescribed in Sections 37-7-451 through 37-7-483.

HISTORY: Codes, 1942, § 6597-09; Laws, 1946, ch. 443, § 16; Laws, 1948, ch. 497, § 10; Laws, 1978, ch. 525, § 33, eff from and after July 1, 1978.

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Principal fund to include funds received from sale of buildings pursuant to this section, see § 29-3-113.

§ 29-3-79. Repealed.

Repealed by Laws, 1978, ch. 525, § 55, eff from and after July 1, 1978.

§ 29-3-79. [Codes, 1942, § 6597-10; Laws, 1946, ch. 443, § 11; Laws, 1948, ch. 497, § 11]

Editor's Notes — Former § 29-3-79 authorized the waiver of a lien for rent.

§ 29-3-81. Leasing of land classified as agricultural land.

(1) Sixteenth section lands, or any lands granted in lieu of sixteenth section lands, classified as agricultural may be leased for the cultivation of rice, or pasturage, for a term not to exceed ten (10) years. All other sixteenth section or lieu lands classified as agricultural may be leased for a term not exceeding five (5) years. All leases of land classified as agricultural shall be for a term to expire on December 31. Except in those cases when the holder of an existing lease on agricultural land elects to re-lease such land, as authorized under this subsection, it shall be the duty of the board of education to lease the sixteenth section or lieu lands at public contract after having advertised such lands for rent in a newspaper published in the county or, if no newspaper is published in the county, then in a newspaper having a general circulation therein, for two (2) successive weeks, the first being at least ten (10) days before the public contract. The lease form and the terms so prescribed shall be on file and available for inspection in the office of the superintendent from and after the public notice by advertisement and until finally accepted by the board. However, before the expiration of an existing lease of land classified as agricultural land, except as otherwise provided in subsection (2) for lands intended to be reclassified, the board of education, in its discretion and subject to the prior approval of the Secretary of State, may authorize the holder of the existing lease to re-lease the land, on no more than one (1) occasion, for a term not to exceed five (5) years and for a rental amount that is no less than one hundred twenty percent (120%) of the total rental value of the existing lease. If the holder of the existing lease elects not to re-lease the land, the board of education shall publish an advertisement of agricultural land for rent which publication shall be not more than four (4) months before the expiration of the term of an existing lease of the land. An election by the holder of the existing lease not to re-lease the land shall not preclude his participation in the bidding process established under this section. Subject to the classification of the land,

the board of education shall enter into a new lease on agricultural land before the expiration of an existing lease on the same land, and the new lease shall take effect on the day immediately following the day on which the existing lease expires. The board of education may require bidders to furnish bond or submit evidence of financial ability.

Bids received by the board of education in response to the advertisement shall be opened at a regular or special meeting of the board. The board of education, at its option, may reject all bids or accept the highest and best bid received in response to the advertisement, or the board of education may hold an auction among those who submitted bids in response to the advertisement. If the board of education elects to hold an auction, no bidder shall be granted any preference. The opening bid at the auction shall be highest bid received in response to the advertisement.

(2) If, during the final year of an existing lease, the board of education notifies the holder of the existing lease that the board of education intends to reclassify the land under Section 29-3-39, the holder of the existing lease may re-lease the land for a term of five (5) years and for a rental amount that is equal to one hundred twenty percent (120%) of the total rental value of the then existing lease. Thereafter, the board of education shall have the option to proceed with the reclassification of the land or may re-lease the land for one (1) additional term of five (5) years after advertising for bids or holding an auction in the same manner as provided in subsection (1) of this section, and the new classification will be implemented upon the expiration of the then existing lease. This subsection does not apply if the board of education intends to reclassify the land under the "commercial" or "industrial" land classification based on a valid business proposal presented to and approved by the board of education.

(3)(a) If the board of education receives an acceptable bid in response to the advertisement and elects not to hold an auction among those submitting bids, then the holder of the existing lease may submit a second bid in an amount not less than one hundred five percent (105%) of the highest acceptable bid received if the holder of the existing lease: (i) submitted a bid in response to the advertisement; and (ii) constructed or made improvements on the leasehold premises after receiving approval of the board of education during the term of the existing lease. For purposes of this subsection, the term "improvements" shall not include any work or items that are done customarily on an annual basis in the preparing, planting, growing, cultivating or harvesting of crops or other farm products.

(b) If the holder of the existing lease elects to submit a second bid, the board of education shall hold an auction among those who submitted bids in response to the advertisement. The opening bid at the auction shall be the second bid of the holder of the existing lease. However, no leaseholder may submit a second bid if: (i) any rent, taxes or other payment required under his lease are past due; or (ii) he is otherwise in default of any term or provision of the lease and such default has not been corrected or cured to the satisfaction of the board of education after more than thirty (30) days' notice to the leaseholder of the default.

(c) If an auction is held, the auction may be conducted at the meeting at which bids are opened or at a subsequent regular or special meeting. The board shall announce the time and place of the auction at the meeting at which bids are opened, and no further notice of the auction is required.

(d) If no bid acceptable to the board of education is received after the advertisement or at auction, the board of education may lease, within ninety (90) days, the lands by private contract for an amount greater than the highest bid previously rejected in order to acquire a fair rental value for the lands. If no bids are received in response to the advertisement, the board of education may negotiate a private contract for a fair rental value, and the term of such contract shall expire on December 31 of the same calendar year in which the contract is made. The board of education may take the notes for the rent and attend to their collection. The board has the right and remedies for the security and collection of such rents given by law to the agricultural landlords.

(e) If an existing lease is terminated before the expiration of the term originally set therein, upon finding that immediate action is necessary to prevent damage or loss to growing crops or to prevent loss of opportunity to lease the land for the current growing season, the board of education may negotiate a private contract for a fair rental value, and the term of such lease shall expire on December 31 of the same calendar year in which the contract is made.

(4) Any holder of a lease on agricultural land that: (a) was granted before July 1, 1997; and (b) has an expiration date on or after April 1 but before December 31 during the final year of the lease term, may extend the term of such lease to December 31 next following the expiration date originally provided for in the lease. If such lease is extended, the rent for the period from the original expiration date in the lease to December 31 next following the original expiration date shall be one hundred five percent (105%) of the annual rent provided in the existing lease prorated over the period of the lease extension. At the expiration of the extended lease term or at the expiration of the original lease term if the lease holder does not extend such lease, the land shall be offered for lease as provided in subsections (1) and (2) of this section.

HISTORY: Codes, 1942, § 6597-12; Laws, 1946, ch. 443, § 10; Laws, 1948, ch. 497, § 13; Laws, 1950, ch. 272; Laws, 1954, ch. 271; Laws, 1956, ch. 291; Laws, 1962, ch. 362; Laws, 1966, ch. 419, § 1; Laws, 1973, ch. 326, § 1; Laws, 1978, ch. 525, § 34; Laws, 1997, ch. 554, § 1; Laws, 1999, ch. 517, § 4; Laws, 2002, ch. 553, § 1; Laws, 2009, ch. 491, § 1, eff from and after July 1, 2009.

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Definition of "agricultural land," "commercial land" and "industrial land," see § 29-3-33.

Reclassification of sixteenth section land generally, see § 29-3-39.

No holder of lease of sixteenth section land classified as agricultural land has priority right to extend lease except as provided in this section, see § 29-3-63.

Leasing of land not classified as agricultural land, see § 29-3-82.

JUDICIAL DECISIONS

1. In general.

Inasmuch as the leases of Sixteenth section lands situated in levee districts had to be approved by the county board of supervisors, the only practical way was to ask for sealed, written bids for leases in order that the same might be submitted to the board. Delta & Pine Land Co. v. Board of Supervisors, 228 So. 2d 893, 1969 Miss. LEXIS 1411 (Miss. 1969).

The separate classification of the alluvial lands located in the levee districts is a reasonable classification, is germane to the leasing of Sixteenth section lands within such districts, and this section [Code 1942, § 6597-12] is constitutional and governs the leasing of those lands. Delta & Pine Land Co. v. Board of Supervisors, 228 So. 2d 893, 1969 Miss. LEXIS 1411 (Miss. 1969).

The notice of the superintendent of education inviting bids for leases of Sixteenth section lands need not necessarily be published in the judicial district of a county having two judicial districts in which the land is located, for this section [Code 1942, § 6597-12] provides only that the notice be published in a newspaper published in the county. Delta & Pine Land Co. v. Board of Supervisors, 228 So. 2d 893, 1969 Miss. LEXIS 1411 (Miss. 1969).

OPINIONS OF THE ATTORNEY GENERAL

Agricultural land may be leased in accord with Section 29-3-81; there appears to be no provision in law for lessee to negotiate lower rental price after bid has been received and awarded and lease contract executed failing showing of mutual mistake wherein only court of competent jurisdiction may award equitable relief. Necaise Sept. 16, 1993, A.G. Op. #93-0664.

A lessee of sixteenth section agricultural lands does hold hunting and fishing rights on those lands, absent a specific lease provision to the contrary; since no sixteenth section lands except forest lands can be leased separately for hunting and fishing purposes, the county board of education may not include a provision in its advertisement for bids or in a lease of agricultural lands to exclude hunting and fishing rights from the lease; the board also has the duty to impose such provisions in sixteenth section leases that a prudent lessor would require. Rogers, January 16, 1998, A.G. Op. #97-0839.

The requirement in subsection (2)(a) that the leaseholder receive prior approval before making improvements is mandatory so that the school district has no discretion in instances where the district did not grant prior approval for the improvements. Griffin, Fev. 25, 2000, A.G. Op. #2000-0078.

It is the clear intent of the legislature in the definition stated in § 29-3-33(f) is that no land may be classified farm-residential unless it has been classified continuously as farm residential since July 1, 1978. Cheney, Sept. 24, 2004, A.G. Op. 04-0457.

§ 29-3-82. Leasing of land not classified as forest land or agricultural land.

The following procedure shall be followed for the leasing of sixteenth section school lands or lands granted in lieu thereof which are not classified as forest land or agricultural land or leased under Section 29-3-99:

(a) Any present leaseholder who desires to renew his lease, or any person who desires to lease sixteenth section or lieu lands, shall make application to the superintendent of education.

(b) Upon receipt of an application for the lease of such lands, the superintendent of education shall promptly give consideration to the application and he shall record his recommendation in writing and present it to the board of education at the next regular meeting of the board.

(c) The board of education, at its meeting, shall consider the application and recommendation of the superintendent of education and may receive any other information which it considers bearing upon the approval of the application and lease of such land. Within thirty (30) days of the receipt of an application, the board shall act on the application and if such action is favorable, the board of education shall submit to the superintendent of education a suggested lease agreement.

(d) The superintendent of education shall then present the lease to the board of supervisors of the county where such land is located. Within thirty (30) days of the receipt of the lease, the board of supervisors shall accept or reject the proposed rental amount.

(e) If the board of supervisors accepts the lease as proposed by the board of education, the superintendent of education shall execute the lease to the applicant under the terms and conditions set forth in the lease.

(f) If the board of supervisors refuses to accept the rental value set by the board of education in the proposed lease, the rental value of the lease shall be determined under the provisions set forth in Section 29-3-1(2).

(g) All sixteenth section or lieu land leases shall be reduced to writing and signed by the president of the board of supervisors, the president of the board of education and the superintendent of education. The chancery clerk shall record the original on the deed records of the county, abstract the lease as a mesne conveyance, and record it on the minutes of the board of supervisors. The chancery clerk shall charge and collect from the lessee the full recording fees. A certified copy of the lease must be provided to the Secretary of State in the format requested.

HISTORY: Laws, 1978, ch. 525, § 2, eff from and after July 1, 1978; Laws, 2020, ch. 365, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "Secretary of State" for "land commissioner" or "state land commissioner" and "secretary" for "commissioner" throughout the section; in (2), deleted "biennial" preceding "report"; and in (3), inserted "or school district" and made a related change, substituted "on schedule of revenue and expenses and principal" for "upon principal," inserted "revenues received from various sources; expenses; escrow funds; principal funds," and added the last sentence.

Cross References — Duties, responsibilities and authority of the state land commissioner under this chapter being transferred to the office of the secretary of state, see § 29-3-1.

Definitions of “board of education” and “superintendent of education,” see § 29-3-1.1.

Definitions of land classifications, see § 29-3-33.

Leasing of land classified as agricultural land, see § 29-3-81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 29-3-61.

1. In general.

In managing sixteenth section school

lands, board of education must exercise care and skill that person of ordinary prudence would exercise in dealing with own property; board may require lessees of sixteenth section land to sign leases and may include terms in leases that persons of ordinary prudence would include. Turney v. Marion County Bd. of Education, 481 So. 2d 770, 1985 Miss. LEXIS 2421 (Miss. 1985).

Requirement of §§ 29-3-1, 29-3-82 that appraisals be paid for out of sixteenth section school funds applies to appraisals resulting from dispute between board of supervisors and board of education in initial leasing or re-leasing of property and does not apply to appraisals resulting from disputes between lessees and boards of education in reappraisal of land during pendency of lease; accordingly, in latter case, board of education may include lease provision requiring lessee to pay for appraisal. Turney v. Marion County Bd. of Education, 481 So. 2d 770, 1985 Miss. LEXIS 2421 (Miss. 1985).

2.-5. [Reserved for future use.]

6. Under former § 29-3-61.

Ninety-nine-year leases of sixteenth section lands are no longer permitted by law. Hood v. Foster, 194 Miss. 812, 13 So. 2d 652, 1943 Miss. LEXIS 109 (Miss. 1943).

Timber on school lands held under a 99-year agricultural lease could not be sold by the board of supervisors without the consent of the lessee, in view of the latter's right to "estovers"; and where board of supervisors sold such timber without lessee's consent, lessee was entitled to maintain a suit to enjoin removal of the timber. Hood v. Foster, 194 Miss. 812, 13 So. 2d 652, 1943 Miss. LEXIS 109 (Miss. 1943).

The State Highway Commission may construct and maintain a public highway over school lands without compensation to the county for such use and without condemnation proceedings. Board of Sup'rs v. State Highway Com., 188 Miss. 274, 194 So. 743, 1940 Miss. LEXIS 30 (Miss. 1940).

OPINIONS OF THE ATTORNEY GENERAL

Subleases and assignments of sixteenth section leases must meet the formal requirements for execution of a "sixteenth section lieu lands" lease provided for by Miss. Code Section 29-3-82(g) and must include the signatures of the President of the Board of Supervisors, the President of the Board of Education and the Superintendent of Education. Wallace, July 18, 1997, A.G. Op. #97-0375.

§ 29-3-83. Repealed.

Repealed by Laws, 1978, ch. 525, § 55, eff from and after July 1, 1978.

§ 29-3-83. [Codes, 1942, § 6597-13; Laws, 1948, ch. 497, § 14]

Editor's Notes — Former § 29-3-83 authorized the lease of lands lying partially within a levee district.

§ 29-3-85. Reservation of rights in lease.

In all surface leases of sixteenth section land made by the board of education, whether such leases be original leases or extensions of existing leases, title to all timber, minerals, oil, and gas on such lands shall be reserved, together with the right of ingress and egress to remove same, whether such provisions be included in the terms of any such lease or not; and no timber shall be cut and used by the lessees except for fuel and necessary repairs and improvements on the leased premises. The board of education, notwithstanding the fact that such land may have been leased for other purposes, shall have the right, from time to time, to sell all merchantable timber on such lands in the manner hereinabove provided. In all cases where surface leases were outstanding on June 28, 1958, and have at least five (5) years remaining of the term thereof wherein the right to sell timber has not been reserved, either expressly or by operation of law, the board may, by agreement with the lessee, sell such timber under the procedure herein set out. In all such cases the forestry commission shall only cause to be marked for cutting such timber as, in its judgment, should be harvested in the best interest of the reversionary estate, and the board may agree to pay to the lessee a portion of the proceeds of such sales from time to time, not to exceed fifty percent (50%) thereof after the deduction of the fifteen percent (15%) escrow money, hereinbefore mentioned, and all other costs of the sale. In any surface lease, the board of education shall reserve the right to grant or sell rights-of-way across any of said land for a road, highway, railroad, or any public utility line, provided only that the leaseholder be paid a reasonable rental for the unexpired term of his lease by the grantee of such right-of-way. If any surface lessee of any such sixteenth section land shall commit, cause to be committed, or permit the commission of any act of waste on any sixteenth section lands under lease to such lessee, then such lease shall thereupon, as to such lessee, cease and terminate and shall thenceforth be null and void; and the board of education shall have the right to institute an action in any court of competent jurisdiction to secure the cancellation of same of record, to recover damages for such waste, and to maintain an action in ejectment to recover possession of the same. To this end, the board of education is hereby authorized and empowered to employ competent counsel to institute and maintain any such action or actions on behalf of the board.

HISTORY: Codes, 1942, § 6598-18; Laws, 1958, ch. 303, § 18; Laws, 1978, ch. 525, § 35; Laws, 1992, ch. 486 § 6, eff from and after passage (approved May 7, 1992).

Cross References — Jurisdiction and powers of board of supervisors, see § 19-3-41.
Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.
Compensation of state forestry commission for expenses, see § 29-3-47.
Mineral leases, see §§ 29-3-85, 29-3-99.
Duties and powers of state forestry commission, see § 49-19-3.

JUDICIAL DECISIONS

1. In general.

The holder of a sixteenth section agricultural lease, which reserved to the board of supervisors the right to grant or sell a right-of-way across said land for any public utility line, had the right to prevent the construction of a pipeline across his leasehold lands under a purported pipeline easement granted by the board of supervisors, where the holder of the easement was not a public utility because its transmission of gas through the proposed pipeline was not open to the public and it had not acquired a certificate of public convenience and necessity. Holder v. Mississippi Fuel Co., 317 So. 2d 891, 1975 Miss. LEXIS 1778 (Miss. 1975).

The cutting and selling of timber from sixteenth section lands by a tenant in possession under the original 99-year agricultural lease constitutes waste. Board of Supervisors v. Bond, 203 So. 2d 800, 1967 Miss. LEXIS 1394 (Miss. 1967).

Where waste has been committed or permitted by the tenant, the cancellation of a sixteenth section lease is mandatory and automatic under this section [Code 1942, § 6598-18]. Board of Supervisors v. Bond, 203 So. 2d 800, 1967 Miss. LEXIS 1394 (Miss. 1967).

OPINIONS OF THE ATTORNEY GENERAL

A lessee of sixteenth section agricultural lands does hold hunting and fishing rights on those lands, absent a specific lease provision to the contrary; since no sixteenth section lands except forest lands can be leased separately for hunting and fishing purposes, the county board of education may not include a provision in its advertisement for bids or in a lease of agricultural lands to exclude hunting and fishing rights from the lease; the board also has the duty to impose such provisions in sixteenth section leases that a prudent lessor would require. Rogers, January 16, 1998, A.G. Op. #97-0839.

In view of the overriding public interest in the carrying out of the purposes of the sixteenth section trust, where the Mississippi Department of Transportation obtains a right of way for a highway that runs across sixteenth section land and subsequently wants to cut the timber in the median of that highway, the timber involved would be harvested by the school board and the proceeds thereof used to support the public schools. Cheney, June 4, 1999, A.G. Op. #99-0231.

§ 29-3-87. Reservation of lands for school building site, public park, or recreational area.

Notwithstanding the provisions of this or any other statute, the several boards of education are hereby authorized and empowered, in their discretion and by resolution spread upon the minutes, to set aside, reserve, and dedicate any available sixteenth section lands or lands in lieu thereof for use by such school district as a site for school buildings, which such dedication and reservation shall be for such length of time, not exceeding fifty (50) years, and upon such terms and conditions as the board of education, in its discretion, shall deem proper. Any such reservation or dedication of sixteenth section lands shall automatically cease and terminate if, at any time, the land involved shall cease to be used for the purpose for which the dedication or reservation is made. The reservation or dedication shall cover the surface of said lands only and shall not prevent the board of education from leasing said lands for oil, gas, and mineral exploration and development in a manner otherwise provided by law.

In the same manner and subject to the same provisions hereinabove set forth the board of education having a timber management and marketing agreement with the state forestry commission or National Forest Service, may set aside, reserve and dedicate any available sixteenth section lands or lands granted in lieu thereof, which has been classified as forest land under the provisions of Section 29-3-31 et seq., Mississippi Code of 1972, to be utilized for public parks and recreation areas. The board of supervisors or the governing authorities of any municipality wherein such lands or any portion thereof lie may expend any funds otherwise available for park or recreational areas in the construction and maintenance of improvements to be located thereon.

The setting aside, reservation and dedication of any such sixteenth section lands, or lands granted in lieu thereof by a board of education to the state park commission for the purpose of locating a state park thereon may be for a length of time not exceeding ninety-nine (99) years.

No sixteenth section or lieu land which is subject to an existing lease shall be set aside, dedicated, and reserved as a school building site or for public park or recreational purposes under the provisions of this section unless the school district involved shall acquire the unexpired leasehold interest from the leaseholder, or unless such lease and leasehold interest shall be surrendered and relinquished by the leaseholder.

HISTORY: Codes, 1942, § 6598-19; Laws, 1958, ch. 303, § 19; Laws, 1974, ch. 546, § 1; Laws, 1978, ch. 525, § 36, eff from and after July 1, 1978.

Editor's Notes — Laws of 1974, ch. 546, § 1 and Laws of 1978, ch. 525, § 36, contain a reference in the second paragraph to forest land classified by the provisions of "§ 39-3-31 et seq." By direction by the office of the Mississippi Attorney General the reference to "39-3-31" has been changed to "29-3-31" to reflect the correct section number.

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Definitions of land classifications, see § 29-3-33.

Restrictions on lease of forest lands, see § 29-3-41.

Improvements on forest lands, see § 29-3-43.

Management of forest lands, see § 29-3-45.

Agreements for timber improvement, see § 29-3-49.

Lease of state park lands involving school lands, see § 55-3-47.

OPINIONS OF THE ATTORNEY GENERAL

Except for uses by the public schools and for use as public parks, pursuant to Section 29-3-87, no governmental agency is entitled to any type of so-called "special consideration" in leasing sixteenth section lands. All sixteenth section land leases to governmental entities are subject to the same leasing restrictions and provisions as are applicable to any other individual or entity. See also Section 29-3-63(2). Hill, March 8, 1995, A.G. Op. #95-0040.

RESEARCH REFERENCES

CJS.

73A C.J.S., Public Lands § 110.

§ 29-3-88. Acquisition of land for construction of school buildings or structures.

The board of education is authorized and empowered to acquire in its own name by purchase, contribution or otherwise all land situated in its district within sixteenth section or lieu lands and under a lease contract which shall be necessary and desirable in connection with the construction of any public school building or structure. If the board shall be unable to agree with the lessee of any such land in connection with any such project, the board shall have the power and authority to acquire any such land by condemnation proceedings in the manner otherwise provided by law and, for such purpose, the right of eminent domain is hereby conferred upon and vested in said board.

HISTORY: Laws, 1978, ch. 525, § 49, eff from and after July 1, 1978.

Cross References — Power of eminent domain generally, see §§ 11-27-1 et seq.
Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

§ 29-3-89. Repealed.

Repealed by Laws, 1978, ch. 525, § 55, eff from and after July 1, 1978.
§ 29-3-89. [Codes, 1942, § 6597.5; Laws, 1956, ch. 268]

Editor's Notes — Former § 29-3-89 authorized the leasing of vacant school lands to fair associations.

§ 29-3-91. Compensation for easement or right of way exception.

(1) Except as otherwise provided in subsection (2) of this section, whenever the United States or any agency thereof, or the state or any agency or subdivision thereof, or any private organization, corporation, association, or person acquires, by condemnation or otherwise, any easement or right-of-way across any sixteenth section land or lieu land, then adequate compensation therefor shall be paid by the party acquiring the same to the board of education concerned; and the sum or sums so received shall be placed in the principal fund or funds of the school district or districts concerned.

(2) If the local board of education, by resolution duly adopted and spread upon its minutes, determines that a new road is necessary to provide access to and on sixteenth section land or lieu land, that the new road will enhance the value of the sixteenth section land or lieu land, and requests that a county or city construct and maintain the road, then, upon agreement by the county or city to bear all costs of construction and maintenance, the local board of education may provide a right-of-way for the new road without compensation from the county or city if the initial cost of constructing the new road exceeds the value of the right-of-way. The local board of education shall have sole discretion in determining the location of any new road constructed under the authority of this subsection. This subsection shall not apply to state road projects or to any change or improvement to or relocation of existing roads under the jurisdiction of a county or city.

HISTORY: Codes, 1942, § 6598-20; Laws, 1958, ch. 303, § 20; Laws, 1964, ch. 405, § 1; Laws, 1978, ch. 525, § 37; Laws, 1999, ch. 366, § 1, eff from and after passage (approved Mar. 15, 1999).

Cross References — Pipeline easements across state-owned land, see §§ 29-1-101 through 29-1-105.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Expenditure of moneys derived from lands, see § 29-3-111.

Principal fund to include funds recieved for easments and rights-of-way pursuant to this section, see § 29-3-113.

JUDICIAL DECISIONS

1. In general.

Award to county of $21,365 for the taking of 42.28 acres for highway purposes out of tract of 640 acres of sixteenth section land, which was subject to a lease having about 14 years to run, was not excessive. Mississippi State Highway Com. v. Madison County, 242 Miss. 471, 135 So. 2d 708, 1961 Miss. LEXIS 588 (Miss. 1961).

OPINIONS OF THE ATTORNEY GENERAL

In view of the overriding public interest in the carrying out of the purposes of the sixteenth section trust, where the Mississippi Department of Transportation obtains a right of way for a highway that runs across sixteenth section land and subsequently wants to cut the timber in the median of that highway, the timber involved would be harvested by the school board and the proceeds thereof used to support the public schools. Cheney, June 4, 1999, A.G. Op. #99-0231.

A school board must receive adequate compensation for any additional easement or right-of-way across sixteenth section lands. Shelton, Sept. 17, 2004, A.G. Op. 04-0452.

A board of education may grant a perpetual easement subject to a reverter clause with a one-time payment of a lump sum. Cheney, Nov. 30, 2004, A.G. Op. 04-0456.

An entity with the right of eminent domain or condemnation is enabled to enter into either a lease with yearly payments or a perpetual easement agreement subject to a reverter clause with a one-time payment of a lump sum amount. Therefore, at the expiration of the lease, or by mutual consent of the parties, the school board may grant such an entity a perpetual easement agreement subject to a reverter clause with a one-time payment of a lump sum amount. Whether by one-time lump sum or yearly payments, the board must seek adequate compensation. Cheney, Nov. 30, 2004, A.G. Op. 04-0456.

School board members must follow statutory requirements and principles of trust management, including "reasonable man" standards, to obtain fair market value for Sixteen section lands: Cheney, Nov. 30, 2004, A.G. Op. 04-0456.

A board of education has the right to grant a Sixteenth section lessee a lease for a set term with annual payments for a right of way, unless an entity with condemnation powers has obtained a right of way easement by eminent domain and thereafter has compensated the school board by a lump sum amount. Cheney, Nov. 30, 2004, A.G. Op. 04-0456.

A utility company, if it has statutory condemnation authority, has the right to go to court to seek the easement and to have the court set the appropriate payment method. Cheney, Nov. 30, 2004, A.G. Op. 04-0456.

§ 29-3-92. Purchase of easements for access to sixteenth section or lieu lands; use of eminent domain to acquire easement access prohibited.

(1) The school board of a school district may acquire, in the name of the district, by purchase, all easements that are necessary and desirable for access to sixteenth section lands or lieu lands. Whenever the purchase price for

property on which an easement is to be located is greater than Fifty Thousand Dollars ($50,000.00), the school board may not purchase the property for an amount exceeding the fair market value of the property, as determined by the average of at least two (2) independent appraisals by certified general appraisers licensed by the State of Mississippi.

(2) In no event shall eminent domain be used against any private land owner by any local school board or local governing authority to acquire easement access to sixteenth section lands or lieu lands. If a landowner objects or refuses to sell an easement right in his or her property to the local school board, the board shall seek another means to gain access to those lands that does not interfere with the landowner's quiet use and enjoyment of his or her property.

HISTORY: Laws, 2011, ch. 372, § 1, eff from and after July 1, 2011.

Editor's Notes — Laws of 2011, ch. 372, § 2, provides:

"SECTION 2. Section 1 of this act shall be codified as a new section in Chapter 3, Title 29, Mississippi Code of 1972."

§§ 29-3-93 through 29-3-97. Repealed.

Repealed by Laws, 1978, ch. 525, § 55, eff from and after July 1, 1978.

§ 29-3-93. [Codes, 1930, § 6761; 1942, § 6599; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1954, ch. 256, § 1].

§ 29-3-95. [Codes, 1942, § 6599.3; Laws, 1954, ch. 256, § 2; Laws, 1956, ch. 160].

§ 29-3-97. [Codes, 1942, § 6606-11; Laws, 1956, ch. 272, §§ 1-3].

Editor's Notes — Former § 29-3-93 authorized the sale of timber, gravel, and acid iron earth, and lease for turpentine or pasturage.

Former § 29-3-95 authorized the sale of timber, gravel, etc., in counties lying in De Soto National Forest and Homochitto National Forest.

Former § 29-3-97 authorized the use of principal funds for construction and equipment of school buildings.

§ 29-3-99. Leases for oil, gas and mineral exploration, mining, production and development.

The board of education is hereby authorized and empowered, in its discretion, to let, demise and lease sixteenth section lands, included in the Choctaw Purchase, or the lands held in lieu of same whether located therein or elsewhere, reserved for the support of township schools, for exploration, mining, production and development by any method of oil, gas, and minerals, including (a) oil, gas, carbon dioxide and other gaseous substances, (b) metals, compounds of metals, or metal-bearing ores, (c) coal, including anthracite, bituminous, subbituminous, lignite and their constituent components and products and minerals intermingled or associated therewith, and (d) sulphur, salt, sand, gravel, fill dirt and clay, upon such terms and conditions and for such consideration as the board of education, in its discretion, shall deem proper and advisable. Such leasing shall, except as hereinafter provided, be done by competitive bids only, made upon at least three (3) weeks public notice given by advertisement in a newspaper published in the county wherein such lands are situated, or if no newspaper be published in said county then in a newspaper having general circulation therein. Such advertisement shall give an accurate legal description of the lands to be leased, inviting sealed proposals thereon to be filed with the superintendent of education. Before bids are requested, the board shall prescribe the form of the lease and shall prescribe the royalty to be retained by the lessor, the annual rental to be paid by the lessee during the primary term of the lease, and shall have as subject to bid only the bonus to be paid by lessee, and, for leases of coal, the bonus to be paid by lessee for any renewal term as hereinafter provided. The lease form and the terms so prescribed shall be on file and available for inspection in the office of the superintendent from and after the public notice by advertisement and until finally accepted by the board. The board of education shall award the lease to the highest bidder in the manner provided by law. Said school lands shall not be leased for oil, gas, and minerals, including metals, compounds of metals, or metal-bearing ores, coal and clay, exploration, mining, production, and development for a bonus of less than One Dollar ($1.00) per acre and a renewal rental or renewal bonus of less than One Dollar ($1.00) per acre per annum during the primary term. Such lands shall not be leased for oil, gas, and other minerals for a primary term of more than five (5) years and so long thereafter as oil, gas or other minerals are being produced and mined from said lands, or so long as the lease is being maintained by other lease provisions, except that a lease shall in no event extend longer than permitted by Section 211 of the Mississippi Constitution. Such lands shall not be leased for coal for a primary term of more than twenty (20) years and so long thereafter as coal is being mined and sold or utilized by lessee from such lands or from adjoining lands within a mine plan which includes such lands or so long as mining operations are being prosecuted on such lands on a continuous basis; provided, however, that any lease of coal may provide for one (1) renewal term of not more than twenty (20) years from and after expiration of the initial term upon payment by lessee of a renewal bonus of not less than One Dollar ($1.00) per acre. Any mine plan referred to in this paragraph shall not contain more than five thousand (5,000) acres. The royalties to be paid shall not be less than (a) on oil, one-eighth (⅛) of that produced and saved from said lands; (b) on gas, including casinghead gas or other gaseous substances produced from said land and sold or used off the premises or in the manufacture of gasoline or other products therefrom, the market value at the well of one-eighth (⅛) of the amount realized from such sale; (c) on coal mined on such land and sold or utilized by lessee, one-twentieth (1/20) of the market value at the mine of each ton of two thousand (2,000) pounds; (d) on all other minerals produced, mined and marketed, one-sixteenth (1/16) either in kind or value at the well or mine at lessor's election, except that on sulphur mined and marketed, the royalty shall be not less than Fifty Cents (50¢) per long ton, except, further, that on salt the royalty shall be not less than Five Cents (5¢) per ton mined. Lessee shall have free use of oil, gas, coal, and water from said land, except water from lessor's wells, unless lessor shall agree in writing to the use of water from lessor's wells, for all operations hereunder, and the royalty on oil, gas, and coal shall be computed after deducting any so used. In leasing said lands for the mining and removal of clay, sand, gravel and fill dirt, the bid shall be by the cubic yard truck measure and to the highest and best bidder, provided that these materials shall not be sold therefrom for less than the regular market price thereof, such price to include the value of the royalty provided for herein. The board of education shall not lease any sixteenth section land that was sold and conveyed in fee simple forever by a board of supervisors prior to 1890.

It is further specifically provided that such leases shall not be let at a special meeting of the board of education.

Leases for metals, coals, sand, gravel, fill dirt or clay may be executed covering land upon which leases are outstanding for the exploration, mining, and development of oil, gas, and other minerals, provided proper safeguards are incorporated in the lease for the protection of the other leaseholders. All such leases shall contain suitable provisions for adequate compensation to the surface lessee, if any, for any damage done to the leasehold estate in such lands and for the use of a substantial portion of the surface thereof for such mining and/or developing or processing purposes, and for rights of ingress and egress, and all such leases shall further contain suitable provisions for adequate compensation to the board of education for any permanent damage done to the surface of the land or any timber thereon. Any future lease of said land after expiration of the present lease thereon will be subject to the rights of any lessee under provisions hereof.

If the lessor commits any error in the leasing procedure which renders the lease void or voidable, the lessee shall be entitled to recover the consideration paid to secure the lease.

No clay shall be leased nor removed within the boundary of any incorporated municipality as such boundary existed on January 1, 1964, nor within one hundred fifty (150) feet of any dwelling house which is either occupied or has been vacant less than ninety (90) days, without the written consent of the leaseholder of the surface from which such clay is to be leased or removed, regardless of classification of such lands.

HISTORY: Codes, 1930, § 6762; 1942, § 6600; Laws, 1926, ch. 318; Laws, 1930, ch. 278; Laws, 1942, ch. 150; Laws, 1962, ch. 363; Laws, 1962, 2d Ex Sess, ch. 19; Laws, 1964, ch. 406; Laws, 1978, ch. 525, § 39; Laws, 1981, ch. 397, § 1; Laws, 1992, ch. 486 § 7; reenacted, Laws, 1993, ch. 378, § 1, eff from and after passage (approved March 16, 1993).

Cross References — Easements for pipelines over state lands, see §§ 29-1-101 through 29-1-105.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Oil, gas, and minerals deemed a separate classification of sixteenth section lands in Choctaw Purchase, see § 29-3-31.

Prima facie validity of leases executed and recorded in substantial conformity with law, see § 29-3-52.

Re-lease or extension of existing oil, gas, or mineral lease on sixteenth section land, see § 29-3-63.

Right of county board of supervisors to lease sixteenth section lands for mineral, oil or gas exploration and development, see § 29-3-85.

Rights of mineral lessee, see § 29-3-101.

Authority to lease state lands for mineral exploration, see § 29-7-3.

Proceeds from leases of sixteenth section school lands or lieu lands located in area defined as coastal wetlands, see § 29-7-14.

Mineral leases of land belonging to agricultural high schools and junior colleges, see § 37-27-29.

Agreement by public officers for cooperative development and operation of oil and gas leases, see § 53-3-51.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

This section [Code 1942, § 6600] is not unconstitutional as being in violation of § 90(p) of the Constitution, prohibiting the passage of local, private or special laws for the management or support of any private or common school, on the theory that, being applicable only to school lands "in the Choctaw Purchase," it applies specially to some but not all parts of the state, since the quoted language was intended to refer to all lands of the state outside of the Chickasaw Cession. Smith v. McCullen, 195 Miss. 34, 13 So. 2d 319, 1943 Miss. LEXIS 119 (Miss. 1943).

The objection that statutory provision permitting lease of sixteenth section lands for oil, gas and mineral exploration and development, and for entry upon such lands for such purposes, was unconstitutional because the lease might under its terms remain in force so long as oil and gas should be produced from the land and therefore longer than the 25 years prescribed by a constitutional provision, is obviated by the statute providing that conveyances purporting to convey or pass a greater estate in the grantor might lawfully convey or pass, shall operate and pass such a right or estate as the grantor might lawfully convey. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Statutory provisions providing for the lease by county authorities upon approval of the state of sixteenth section lands for oil, gas and mineral exploration and development, and for entry on such lands for such purposes, were not unconstitutional, in that they authorized a sale of minerals in situ, as a part of the realty, and that the lease might under its terms remain in force so long as oil and gas were produced on the land which might be longer than 25 years, all in violation of the state constitution prohibiting either a sale of any part of the sixteenth section lands, or a lease thereof for a period of more than 25 years. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Statutes providing for the lease by county authorities upon approval of the state of sixteenth section school lands for oil, gas and mineral exploration and development and for entry on such lands for such purposes, were not unconstitutional as authorizing a sale of minerals in situ, as a part of the realty, in violation of the constitutional provisions prohibiting a sale of any part of the sixteenth section lands, since the constitutional prohibition extended only to lands, using the term in the restricted sense as meaning only the soil and not the soil and everything above and below it. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

2. Construction and application.

On application to lease sixteenth section or lieu lands for oil, gas, and mineral exploration and development, an acceptance by the board of supervisors constituted a contract. Oliver v. Board of Supervisors, 211 Miss. 447, 51 So. 2d 766, 1951 Miss. LEXIS 375 (Miss. 1951).

Where there was a lease of school lands for oil, gas, and mineral exploration and development and there was a mistake by both parties as to the number of acres in the lease, there being more acreage than described in lease, the lease would be reformed to include the additional acreage. Oliver v. Board of Supervisors, 211 Miss. 447, 51 So. 2d 766, 1951 Miss. LEXIS 375 (Miss. 1951).

In leasing sixteenth section or lieu lands for oil, gas, and mineral exploration and development, a responsibility devolves upon a board of supervisors to determine the number of acres and that determination is requisite to the performance of duty, and in so doing, the supervisors were under the obligation to exercise a high degree of care. Oliver v. Board of Supervisors, 211 Miss. 447, 51 So. 2d 766, 1951 Miss. LEXIS 375 (Miss. 1951).

Mineral leases under this section [Code 1942, § 6600] are limited to six-year terms, and neither board of supervisors nor county superintendent may lawfully make contract binding their successors, which begins after terms of office of board making it has expired. Humble Oil & Refining Co. v. State, 206 Miss. 847, 41 So. 2d 26, 1949 Miss. LEXIS 306 (Miss. 1949).

Members of board of supervisors and county superintendent of education, whose terms of office expired December 31, 1947, had no power or authority on October 20, 1947, to execute new mineral lease under this section [Code 1942, § 6600] to go into effect on April 7, 1948 and continue effective for period of two years, though four of supervisors and county superintendent were reelected. Humble Oil & Refining Co. v. State, 206 Miss. 847, 41 So. 2d 26, 1949 Miss. LEXIS 306 (Miss. 1949).

Plaintiffs were not entitled to cancelation of adverse claims to certain sixteenth section school lands and a mineral lease executed by board of supervisors, where they based their rights on an admittedly valid 99-year lease and the evidence showed that they were only lessees for the unexpired term of the original lease. Pilgrim v. Neshoba County, 206 Miss. 703, 40 So. 2d 598, 1949 Miss. LEXIS 294 (Miss. 1949).

The phrase "in the Choctaw purchase" was used to distinguish sixteenth sections of all lands in the state from sixteenth sections in the Chickasaw Cession and to refer to all lands in the state outside the Chickasaw Cession. Smith v. McCullen, 195 Miss. 34, 13 So. 2d 319, 1943 Miss. LEXIS 119 (Miss. 1943).

Chancery court had jurisdiction under Code 1942, § 6613 to entertain a suit by school trustees of a township, seeking court's approval of a proposed but unexecuted mineral lease of sixteenth section land, to determine whether such land was subject to lease by proper authorities under any existing law, and, particularly, whether such land could be leased by county supervisors under Code 1930, § 6762, and to determine the validity of this section [Code 1942, § 6600], amending said section of the 1930 Code. Smith v. McCullen, 195 Miss. 34, 13 So. 2d 319, 1943 Miss. LEXIS 119 (Miss. 1943).

This section [Code 1942, § 6600] empowers the board of supervisors of Pearl River County, with the approval of the county superintendent of education, to lease school lands in township 3, range 17, of such county. Smith v. McCullen, 195 Miss. 34, 13 So. 2d 319, 1943 Miss. LEXIS 119 (Miss. 1943).

It would be contrary to every rule of reason to require that prior compensation be made to the surface lessees of their damages, as a condition precedent to the state's right to enter upon these lands to explore for, drill and remove minerals, where it is known that the measure of such compensation cannot be ascertained until after the extent of such exploration and drilling operations shall have been determined, following such an entry. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Since the school trustees of township, who had executed 99-year agricultural leases on sixteenth section lands in the county, were without power to waive the right of the state to go upon such lands in the future and utilize any source of revenue that might be derived from them not disposed of by such agricultural or surface leases, it was not essential that the right to minerals be expressly reserved therein, since there was necessarily reserved that which the grantor was without power to convey or contract away. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Decision of the court below holding that the bill of complaint stated a good cause of action for confirming the title of a lessee from the state in the oil and gas upon sixteenth section lands, cancelling oil and gas easement contracts and leases executed by 99-year agricultural or surface lessees, and awarding injunctive relief to prevent such lessees from preventing the entry upon such lands by the lessee of the state in order to explore and develop such lands for oil and gas, should be affirmed; and that court was vested with plenary power on a final hearing under the complainants' offer to do equity, and as a condition precedent to keeping the injunction in force, to make secure the rights of agricultural lessees and afford them an adequate remedy in equity, or at law if desired, to collect such damages as might be later sustained to their surface rights. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Leases made under statute authorizing board of supervisors to lease sixteenth section land for oil, gas and mineral development confer on lessees no greater right to enter on lands than State has. Gulf Refining Co. v. Terry, 163 Miss. 869, 142 So. 457, 1932 Miss. LEXIS 98 (Miss. 1932), overruled, Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Lessor under oil and gas lease executed by county supervisors in 1929 held not entitled to injunction restraining lessee, under lease for term of years executed by school trustees of township in 1846, from interfering with entry under oil and gas lease. Gulf Refining Co. v. Terry, 163 Miss. 869, 142 So. 457, 1932 Miss. LEXIS 98 (Miss. 1932), overruled, Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

OPINIONS OF THE ATTORNEY GENERAL

The controlling statute a school board must follow to sell sand, gravel, fill dirt, or clay from sixteenth section school trust land is Section 29-3-99 and not Section 31-7-1 et seq. Section 29-3-99 is a specific statute which details the competitive bid requirements on sixteenth section lands for the sale of sands, gravel, fill dirt or clay. Section 31-7-1 et seq. are of a more general nature which deal with public purchasing requirements. McWhorter, November 27, 1995, A.G. Op. #95-0769.

The sale of materials such as sand, gravel, dirt, and clay from sixteenth section lands must be made in strict accord with the provisions of the statute, including the requirements for competitive bids after notice by advertisement. Shows, October 30, 1998, A.G. Op. #98-0654.

RESEARCH REFERENCES

Law Reviews.

1982 Mississippi Supreme Court Review: Miscellaneous: Mineral Leasing of State-Owned Lands. 53 Miss. L. J. 199, March 1983.

§ 29-3-101. Rights of mineral lessee.

Every such lease shall empower the lessee to enter upon the premises leased and explore and develop such premises for oil, gas, or either of them, or such other mineral as may be included in the terms of said lease, and to do all things necessary or expedient for the production and preservation of any of such products; and shall inure to the lessee, his heirs or assigns.

HISTORY: Codes, 1930, § 6763; 1942, § 6601; Laws, 1926, ch. 318; Laws, 1930, ch. 278.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

Statutory provisions providing for the lease by county authorities upon approval of the state of sixteenth section lands for oil, gas and mineral exploration and development, and for entry on such lands for such purposes, were not unconstitutional, in that they authorized a sale of minerals in situ, as a part of the realty, and that the lease might under its terms remain in force so long as oil and gas were produced on the land which might be longer than 25 years, all in violation of the state constitution prohibiting either a sale of any part of the sixteenth section lands, or a lease thereof for a period of more than 25 years. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

The objection that statutory provision permitting lease of sixteenth section lands for oil, gas and mineral exploration and development, and for entry upon such lands for such purposes, was unconstitutional because the lease might under its terms remain in force so long as oil and gas should be produced from the land and therefore longer than the 25 years prescribed by a constitutional provision, is obviated by the statute providing that conveyances purporting to convey or pass a greater estate in the grantor might lawfully convey or pass, shall operate and pass such a right or estate as the grantor might lawfully convey. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Statutes providing for the lease by county authorities upon approval of the state of sixteenth section school lands for oil, gas and mineral exploration and development and for entry on such lands for such purposes, were not unconstitutional as authorizing a sale of minerals in situ, as a part of the realty, in violation of the constitutional provisions prohibiting a sale of any part of the sixteenth section lands, since the constitutional prohibition extended only to lands, using the term in the restricted sense as meaning only the soil and not the soil and everything above and below it. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

2. Construction and application.

There is no such statute as this with reference to the purchaser of the timber on sixteenth section lands, and, accordingly, the timber on such lands, held under a 99-year agricultural lease, could not be sold without the consent of the lessee. Hood v. Foster, 194 Miss. 812, 13 So. 2d 652, 1943 Miss. LEXIS 109 (Miss. 1943).

Since the school trustees of township, who had executed 99-year agricultural leases on sixteenth section lands in the county, were without power to waive the right of the state to go upon such lands in the future and utilize any source of revenue that might be derived from them not disposed of by such agricultural or surface leases, it was not essential that the right to minerals be expressly reserved therein, since there was necessarily reserved that which the grantor was without power to convey or contract away. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

It would be contrary to every rule of reason to require that prior compensation be made to the surface lessees of their damages, as a condition precedent to the state's right to enter upon these lands to explore for, drill and remove minerals, where it is known that the measure of such compensation cannot be ascertained until after the extent of such exploration and drilling operations shall have been determined, following such an entry. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Agricultural leases of sixteenth section lands did not pass any interest in the minerals, which remained in the state as trustee for the public, notwithstanding that there was no express reservation thereof in such leases, and the state has the right to enter upon such lands and remove the minerals. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Decision of the court below holding that the bill of complaint stated a good cause of action for confirming the title of a lessee from the state in the oil and gas upon sixteenth section lands, cancelling oil and gas easement contracts and leases executed by 99-year agricultural or surface lessees, and awarding injunctive relief to prevent such lessees from preventing the entry upon such lands by the lessee of the state in order to explore and develop such lands for oil and gas, should be affirmed; and that court was vested with plenary power on a final hearing under the complainants' offer to do equity, and as a condition precedent to keeping the injunction in force, to make secure the rights of agricultural lessees and afford them an adequate remedy in equity, or at law if desired, to collect such damages as might be later sustained to their surface rights. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Leases made under statute authorizing board of supervisors to lease sixteenth section lands for oil, gas, and mineral development confer on lessees no greater right to enter on lands than State has. Gulf Refining Co. v. Terry, 163 Miss. 869, 142 So. 457, 1932 Miss. LEXIS 98 (Miss. 1932), overruled, Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Lessor under oil and gas lease executed by county supervisors in 1929 held not entitled to injunction restraining lessee, under lease for term of years executed by school trustees of township in 1846, from interfering with entry under oil and gas lease. Gulf Refining Co. v. Terry, 163 Miss. 869, 142 So. 457, 1932 Miss. LEXIS 98 (Miss. 1932), overruled, Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

§ 29-3-103. Confirmation of leases.

Any person holding or claiming any sixteenth section school land under a lease or extension thereof made by the board of education or by their authority or direction, may proceed by bill in chancery court to have such lease or extension thereof confirmed and quieted. He shall set forth in his bill his claim for title under the lease or extension thereof which he asks to have confirmed, the date of such lease or extension, to whom made, the consideration, and the amount paid and to be paid, if any. The superintendent of education of the district in which the bill is filed and in which the land may be located shall be made a party defendant, and process shall be served on him as in other cases in chancery. Such suits shall be brought in the county in which the sixteenth section or some part thereof is located, and shall be proceeded with as in other cases in chancery, except that the bill shall not be taken as confessed; and it shall be competent for the court to hear and consider evidence aliunde the records of the board of education as to whether the lease or extension thereof sought to be confirmed was legally made and whether the complainant is entitled to relief. If it is clearly proven that the requirements of law regulating such leases or extensions thereof were complied with, the proper relief shall be granted even though the records contain no such affirmative showing. The party claiming title under such lease or extension thereof shall be entitled to the benefits of this section whether the suit be filed by him or by the school district, as required by this chapter.

The provisions of statute made by Sections 29-3-105 and 29-3-107 shall fully apply under this section.

HISTORY: Codes, 1930, § 6775; 1942, § 6616; Laws, 1924, ch. 283; Laws, 1930,

ch. 278; Laws, 1950, ch. 366; Laws, 1978, ch. 525, § 39, eff from and after July 1, 1978.

Cross References — Confirmation of title by a bill in chancery court, see § 11-17-29.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Presumption that all sixteenth sections or lands taken in lieu thereof are subject to lease, see § 29-3-51.

Decree of confirmation, see § 29-3-105.

Illegal leases, see § 29-3-107.

JUDICIAL DECISIONS

1. In general.

In a taxpayer's action seeking an adjudication that a county board of supervisors had leased 320 acres of sixteenth section land for an inadequate consideration in violation of the constitutional prohibition against the donation of state lands, the trial court erred in sustaining defendants' plea of res judicata as a bar to the action, notwithstanding that the statutory procedure for confirmation of the lease had been followed. The doctrine of res judicata would yield to the constitution where the earlier confirmation proceedings had not given notice to the public and where defendant had not filed an answer, thus leading to the conclusion that the board had given its passive consent to the decree confirming the lease. Bragg v. Carter, 367 So. 2d 165, 1978 Miss. LEXIS 2443 (Miss. 1978).

Taxpayers should have been admitted as parties in a suit brought to confirm title of a sixteenth section lease where they were not dilatory in filing their petition to set aside the lease, the interest of the taxpayers could not be protected by a final decree confirming title to the leasehold interest in the lands involved, and the taxpayers were not injecting new issues into the case, but were contending that the consideration paid for the lease was so inadequate as to amount to a donation. Edwards v. Harper, 321 So. 2d 301, 1975 Miss. LEXIS 1527 (Miss. 1975).

A petition filed by taxpayers in a cause brought to extend a lease on sixteenth section land, in which the taxpayers alleged that the rental provided for in the lease was so grossly inadequate as to render the lease a donation, was sufficient to withstand a general demurrer. Edwards v. Harper, 321 So. 2d 301, 1975 Miss. LEXIS 1527 (Miss. 1975).

Where sixteenth section lands, partly located in the municipality, were leased by the board of supervisors to a nonprofit corporation, and under a contract with the power company, the nonprofit corporation undertook the construction of a reservoir on the leased premises, and the power company was to use the water therein in connection with the operation of its electric generating plant, and the capitalized value of the leased land per acre upon the completion of the proposed improvements would greatly exceed the present capitalized value per acre, and there was no taking or removing of the soil from the premises, the construction of the reservoir would not constitute waste; nor did the fact that the leased lands were formerly used almost exclusively for agricultural purposes mean that it would be unlawful to construct the proposed improvements or that the land should be used for commercial or residential purposes, especially in view of the fact that there had been no development of the lands, and the chancellor's action in refusing to enjoin the construction of the proposed improvements and in confirming the lease was proper. Dodds v. Sixteenth Section Development Corp., 232 Miss. 524, 99 So. 2d 897, 1958 Miss. LEXIS 302 (Miss. 1958).

The chancery court has no jurisdiction under this section [Code 1942, § 6616] to confirm a proposed but unexecuted mineral lease. Smith v. McCullen, 195 Miss. 34, 13 So. 2d 319, 1943 Miss. LEXIS 119 (Miss. 1943).

§ 29-3-105. Decree of confirmation.

Should the court be of the opinion that the complainant is entitled to relief, it shall decree a confirmation of the lease under which complainant claims and fix the date of its commencement and termination; and such decree shall vest in the complainant a good and perfect title to the term of the lease for the time fixed in such decree. Nothing in this or the preceding sections shall be construed as releasing any person from the payment in full of any balance that may be due on any lease under which he may claim or hold any or all of such sixteenth section school lands, but he must either pay or tender in court any balance that may be due as aforesaid before the relief prayed for shall be granted.

HISTORY: Codes, 1930, § 6776; 1942, § 6617; Laws, 1924, ch. 283; Laws, 1930, ch. 278.

Cross References — Bill in chancery court to confirm and quiet lease, see § 29-3-103.

Illegal leases, see § 29-3-107.

JUDICIAL DECISIONS

1. In general.

In a taxpayer's action seeking an adjudication that a county board of supervisors had leased 320 acres of sixteenth section land for an inadequate consideration in violation of the constitutional prohibition against the donation of state lands, the trial court erred in sustaining defendant's plea of res judicata as a bar to the action, notwithstanding that the statutory procedure for confirmation of the lease had been followed. The doctrine of res judicata would yield to the constitution where the earlier confirmation proceedings had not given notice to the public and where defendant had not filed an answer, thus leading to the conclusion that the board had given its passive consent to the decree confirming the lease. Bragg v. Carter, 367 So. 2d 165, 1978 Miss. LEXIS 2443 (Miss. 1978).

Where sixteenth section lands, partly located in the municipality, were leased by the board of supervisors to a nonprofit corporation, and under a contract with the power company, the nonprofit corporation undertook the construction of a reservoir on the leased premises, and the power company was to use the water therein in connection with the operation of its electric generating plant, and the capitalized value of the leased land per acre upon the completion of the proposed improvements would greatly exceed the present capitalized value per acre, and there was no taking or removing of the soil from the premises, the construction of the reservoir would not constitute waste; nor did the fact that the leased lands were formerly used almost exclusively for agricultural purposes mean that it would be unlawful to construct the proposed improvements or that the land should be used for commercial or residential purposes, especially in view of the fact that there had been no development of the lands, and the chancellor's action in refusing to enjoin the construction of the proposed improvements and in confirming the lease was proper. Dodds v. Sixteenth Section Development Corp., 232 Miss. 524, 99 So. 2d 897, 1958 Miss. LEXIS 302 (Miss. 1958).

§ 29-3-107. Illegal leases.

Should it appear to the court that the lease under which the complainant holds or claims title was illegally made and void, then the court may proceed to have an account stated of the amount of money, principal and interest which has actually been paid in consideration for such lease by the complainant and those under whom he may claim, and an account of the rents, issues and profits arising from said land, less the cost of any necessary, permanent, valuable, and not ornamental improvements made upon said land, and may decree any excess of money paid and interest and cost of improvements over the rent, issues, and profits to complainants. Such decree shall be a lien upon the rents, issues and profits accrued or to accrue from the particular sixteenth section involved in such suit until the same is fully paid and satisfied. Upon the rendition of such decree, the secretary of the board of education shall issue a warrant for the amount decreed to be paid to the complainant against the funds of such sixteenth section, and the same shall be paid out of the first available money to the credit of such funds. Any excess in the amount of the rents, issues and profits, after deducting the cost of improvements and amount paid by complainant, shall be decreed against him, together with a writ of possession in favor of the defendant. All court costs in suits brought shall be paid by the party or parties seeking relief under the provisions hereof.

HISTORY: Codes, 1930, § 6777; 1942, § 6618; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1978, ch. 525, § 40, eff from and after July 1, 1978.

Cross References — Definitions of “board of education” and “superintendent of education,” see § 29-3-1.1.

Confirmation of leases, see § 29-3-103.

Decree of confirmation, see § 29-3-105.

JUDICIAL DECISIONS

1. In general.

Where illegal lease made, chancery court may have an account stated and may refund to lessee money or property paid over and above rents, issues and profits of lease. Jackson County v. Worth, 127 Miss. 813, 90 So. 588, 1921 Miss. LEXIS 285 (Miss. 1921).

§ 29-3-109. Crediting of funds derived from lands.

All expendable funds derived from sixteenth section or lieu lands shall be credited to the school districts of the township in which such sixteenth section lands may be located, or to which any sixteenth section lieu lands may belong. Such funds shall not be expended except for the purpose of education of the educable children of the school district to which they belong, or as otherwise may be provided by law.

The board of education shall require additional securities from the county depository when necessary to protect such funds and, in the event of their failure so to do, they shall be liable therefor upon their official bond.

HISTORY: Codes, 1942, § 6598-02; Laws, 1958, ch. 303, § 2; Laws, 1978, ch. 525, § 41, eff from and after July 1, 1978.

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Expenditure of money derived from lands, see § 29-3-111.

JUDICIAL DECISIONS

1. In general.

Sixteenth Section funds may be expended for the support of schools in a school district which includes a township, although none of the children living in the township attend such schools. Daniels v. Sones, 245 Miss. 461, 147 So. 2d 626, 1962 Miss. LEXIS 567 (Miss. 1962).

§ 29-3-111. Expenditure of moneys derived from lands.

All moneys heretofore or hereafter derived from the leasing of said lands for oil, gas and mineral purposes, including any bonus or delay rental payable under such leases, and all moneys derived from the annual payment of rents from the leasing of said lands for agricultural, residential, commercial, industrial, grazing or other purposes, or derived as interest upon loans or investments of principal funds, and all moneys heretofore or hereafter derived from the sale of timber, may be expended for any of the purposes authorized by law. In cases where said moneys have been transferred to the principal fund and it is determined to expend same for any of the purposes authorized by law, such moneys shall be transferred to the proper fund for expenditure upon order of the board of education.

HISTORY: Codes, 1942, § 6598-03; Laws, 1958, ch. 303, § 3; Laws, 1978, ch. 525, § 42, eff from and after July 1, 1978.

Cross References — Definitions of "board of education" and "superintendent of education," see Editor's Note following § 29-3-1.

JUDICIAL DECISIONS

1. In general.

Sixteenth section funds may be expended for the support of schools in a school district which includes a township, although none of the children living in the township attend such schools. Daniels v. Sones, 245 Miss. 461, 147 So. 2d 626, 1962 Miss. LEXIS 567 (Miss. 1962).

§ 29-3-113. Investment and lending of funds.

The principal fund shall be a permanent township fund which shall consist of funds heretofore or hereafter derived from certain uses or for certain resources of school trust lands which shall be invested and, except as otherwise provided in this section, only the interest and income derived from such funds shall be expendable by the school district.

The principal fund shall consist of:

(a) Funds received for easements and rights-of-way pursuant to Section 29-3-91;

(b) Funds received for sales of lieu land pursuant to Sections 29-3-15 through 29-3-25;

(c) Funds received from any permanent damage to the school trust land;

(d) Funds received from the sale of nonrenewable resources, including, but not limited to, the sale of sand, gravel, dirt, clays and royalties received from the sale of mineral ores, coal, oil and gas;

(e) Funds received from the sale of buildings pursuant to Section 29-3-77;

(f) Funds received from the sale of timber; and

(g) Funds received pursuant to Section 29-3-23(2).

It shall be the duty of the Board of Education to keep the principal fund invested in any direct obligation issued by or guaranteed in full as to principal and interest by the United States of America or in certificates of deposit issued by a qualified depository of the State of Mississippi as approved by the State Treasurer. The certificates of deposit may bear interest at any rate per annum which may be mutually agreed upon but in no case shall said rate be less than that paid on passbook savings.

The Board of Education is authorized to invest the funds in interest bearing deposits or other obligations of the types described in Section 27-105-33 or in any other type investment in which any other political subdivision of the State of Mississippi may invest, except that one hundred percent (100%) of the funds are authorized to be invested. For the purposes of investment, the principal fund of each township may be combined into one or more district accounts; however, the docket book of the county superintendent shall at all times reflect the proper source of such funds. Provided that funds received from the sale of timber shall be placed in a separate principal fund account, and may be expended for any of the purposes authorized by law.

The Board of Education shall have authority to borrow such funds at a rate of interest not less than four percent (4%) per annum and for a term not exceeding twenty (20) years, for the erection, equipment or repair of said district schools, to provide local funds for any building project approved by the State Board of Education or to provide additional funds for forest stand improvement as set forth in Section 29-3-47. In addition, the board may borrow the funds under the same interest restrictions for a term not exceeding ten (10) years to provide funds for the purchase of school buses. The Board of Education of any school district in any county that has an aggregate amount of assets in its principal fund in excess of Five Million Dollars ($5,000,000.00) may deduct an amount not to exceed Five Hundred Thousand Dollars ($500,000.00) for the purpose of covering the cost of asbestos removal from school district buildings. Such asbestos removal shall be construed to constitute the repair of school district facilities as prescribed in Section 29-3-115.

No school land trust funds may be expended after the annual payment date until the payment is made on such loan. Once a district is current on its loan payments, the district may spend expendable trust funds earned or accumulated in previous years for any purpose for which expendable trust funds may be spent. The annual payment can be made from any funds available to the school district except minimum foundation program funds.

It shall be unlawful for the Board of Education to borrow any sixteenth section school funds in any other manner than that prescribed herein, and if any such funds shall be borrowed or invested in any other manner, any officer concerned in making such loan and investment or suffering the same to be made in violation of the provisions of this section shall be liable personally and on his official bond for the safety of the funds so loaned.

HISTORY: Codes, 1930, § 6764; 1942, § 6602; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1934, ch. 270; Laws, 1938, ch. 239; Laws, 1940, ch. 187; Laws, 1942, ch. 158; Laws, 1954, ch. 278; Laws, 1960, ch. 309; Laws, 1972, ch. 449, § 1; Laws, 1978, ch. 525, § 43; Laws, 1988, ch. 332; Laws, 1990, ch. 562, § 1; Laws, 1997, ch. 402, § 1; Laws, 1999, ch. 369, § 2; Laws, 2003, ch. 435, § 1, eff from and after July 1, 2003; Laws, 2020, ch. 313, § 1, eff from and after passage (approved June 11, 2020).

Editor's Notes — Laws of 1990, Chapter 589, § 54, amended this section effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declare that sufficient funds were dedicated and made available for the implementation of Chapter 589. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions have not been printed in this volume. Text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

Amendment Notes — The 2020 amendment, effective June 11, 2020, added the second sentence in the next-to-last paragraph.

Cross References — County bonds and notes, see §§ 19-9-1 et seq.

Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Proceeds of sale of lieu lands, see § 29-3-23.

Power of board of supervisors to expend funds as provided in § 29-3-23(2), see § 19-3-41(6).

Proceeds from rentals, royalties, or other revenue payable under leases, see § 29-3-59.

Investment of surplus funds from the issuance of bonds, notes, and certificates of indebtedness in the same manner as provided for the investment of sixteenth section principal funds, see § 37-59-43.

JUDICIAL DECISIONS

ANALYSIS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Loan by board of supervisors of sixteenth section township funds to individual executing trust deed held not invalid for failure to observe proceedings required in statute. Gully v. McClellan, 170 Miss. 405, 153 So. 524, 1934 Miss. LEXIS 91 (Miss. 1934).

Under such statute board of supervisors might extend loan of sixteenth section township funds where security was adequate, since object of funds was to produce revenue for schools. Gully v. McClellan, 170 Miss. 405, 153 So. 524, 1934 Miss. LEXIS 91 (Miss. 1934).

County supervisors, in making loan of sixteenth section township funds, were required to exercise discretion, and there was no personal liability merely because statutory directions were not followed in making loan. Gully v. McClellan, 170 Miss. 405, 153 So. 524, 1934 Miss. LEXIS 91 (Miss. 1934).

County supervisors, not following statutory directions in making loan of sixteenth section township funds, would only be personally liable on official bonds if it developed that security was insufficient to bring amount of loan with interest. Gully v. McClellan, 170 Miss. 405, 153 So. 524, 1934 Miss. LEXIS 91 (Miss. 1934).

County board of supervisors not making loan of sixteenth section township funds would not be liable for failure to collect funds loaned by predecessors in view of statute providing for collection by superintendent of education. Gully v. McClellan, 170 Miss. 405, 153 So. 524, 1934 Miss. LEXIS 91 (Miss. 1934).

Statute respecting loan by county supervisors of sixteenth section township funds imposed its own liability for violating statute, and statute regarding supervisors' bonds does not apply where supervisors did not comply with statutory directions. Gully v. McClellan, 170 Miss. 405, 153 So. 524, 1934 Miss. LEXIS 91 (Miss. 1934).

OPINIONS OF THE ATTORNEY GENERAL

Sixteenth section funds may not be invested in mutual funds since shares in such are not direct obligations of United States and are not guaranteed in full by United States as required by Miss. Code Ann. Section 29-3-113. Montgomery, Nov. 25, 1992, A.G. Op. #92-0851.

Sixteenth Section principal fund monies cannot be used to acquire two parcels of land for school purposes to enlarge a campus of a new school under construction except in the form of a loan subject to the requirements found in Section 29-3-113. See also Section 29-3-27. Brown, April 30, 1996, A.G. Op. #96-0196.

Based on the language of Sections 29-3-113 and 29-3-27, the County Board of Education may use interest and income derived from the proceeds of the sale of the sixteenth section land to the County Board of Supervisors toward the purchase of a 400-acre tract. The school board may not use money from the principal fund to purchase the 400 acres. Clifton, October 29, 1996, A.G. Op. #96-0685.

A school board can choose to exercise its authority to invest school funds, including sixteenth section principal funds, by establishing a district investment plan and authorizing a particular school official to implement the plan by carrying out purchases and sales of securities and other investments authorized by Sections 29-3-113 and 37-59-43; the school board members would still be responsible for the safety of such funds and would not esape liability for their loss in the event they were lost through unlawful or negligent act of the designated school official. Turner, August 28, 1998, A.G. Op. #98-0475.

A school district may purchase such securities and obligations as allowed by state law through brokers, who may charge an agreed fee for their services, provided the fee is found by the school board to be reasonable and commensurate with those services; there is no authority for a school district to pay more than the market value of securities by means of a mark up by a dealer. Turner, August 28, 1998, A.G. Op. #98-0475.

Where revenue is shared with another school district from a section that is in a township containing more than one school district, any funds received from a shared section must be divided between the school districts based on the annual lists of school children. Cheney, May 16, 2003, A.G. Op. 03-0163.

RESEARCH REFERENCES

Am. Jur.
68 Am. Jur. 2d, Schools §§ 96 et seq.

CJS.
73A C.J.S., Public Lands §§ 160-162.

§ 29-3-115. Use of expendable funds.

The expendable funds derived from sixteenth section or lieu lands may be expended for the building and repair of schoolhouses, teachers' homes, and other school facilities, the purchase of furniture, school vehicles and equipment for same, the payment of teachers' salaries, and for all other purposes in operating and maintaining the schools of the district to which such funds belong for which other available school funds may be expended. Such funds may also be expended for clearing, draining, reforesting and otherwise improving any sixteenth section lands of township to which any such available funds may belong. Such funds may also be expended for the purpose of paying any drainage district taxes, costs, expenses, and assessments for which the sixteenth section may be liable, and in such case the same shall be paid by the board of education out of any funds which would otherwise be paid over to the school district entitled thereto under the provisions of Sections 29-3-115 through 29-3-123. Such funds may also be expended to pay all reasonable and necessary attorneys' fees incurred to clear the title on any sixteenth section lieu lands located outside the county.

HISTORY: Codes, 1942, § 6606-01; Laws, 1954, ch. 258, § 1; Laws, 1978, ch. 525, § 44; Laws, 1983, ch. 347, eff from and after passage (approved March 15, 1983).

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Expenditures for asbestos removal from school facilities, see § 29-3-113.

Revenues to be paid into maintenance or building fund, see § 29-3-117.

Division of funds among school districts, see § 29-3-119.

Preparation of lists of educable children required before payment of funds as provided in this section, see § 29-3-123.

JUDICIAL DECISIONS

1. In general.

Sixteenth Section funds may be expended for the support of schools in a school district which includes a township, although none of the children living in the township attend such schools. Daniels v. Sones, 245 Miss. 461, 147 So. 2d 626, 1962 Miss. LEXIS 567 (Miss. 1962).

OPINIONS OF THE ATTORNEY GENERAL

In connection with the lease by a school district of agricultural land to a developer under a residential development lease contract, the district may not pledge a portion of its sixteenth section revenues from long-term residential leases which it hopes to be receiving to a "lake maintenance fund" because, once the lake has been leased, it is the lessee's responsibility to maintain it. Chaney, Nov. 25, 2002, A.G. Op. #02-0629.

§ 29-3-117. Revenues to be paid into maintenance or building fund.

All expendable sixteenth section revenues to which a school district shall become entitled, as provided in Sections 29-3-115 through 29-3-123 from annual rents, interest and other sources shall be paid into the maintenance or building fund of the school district entitled thereto on order of the board of education.

HISTORY: Codes, 1942, § 6606-05; Laws, 1954, ch. 258, § 5; Laws, 1978, ch. 525, § 45, eff from and after July 1, 1978.

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

Use of expendable funds, see § 29-3-115.

Division of funds among school districts, see § 29-3-119.

Preparation of lists of educable children required before payment of expendable revenues as provided in this section, see § 29-3-123.

§ 29-3-119. Division of funds among school districts.

(1) Where there is only one (1) school district in the township to which the available funds belong, such school district shall be entitled to the whole of such funds, and the funds shall be handled in the manner set forth in this section.

(2) In cases where a township having available funds is occupied by two (2) or more school districts or parts of school districts, the available funds of the township shall be divided between the districts lying wholly or partly within such township in proportion to the number of children residing in that portion of each district which lies within such township and who are enrolled in the schools of that district, as compared to the total number of children residing in such township and enrolled in the schools of all districts lying wholly or partly in that township. For such purpose, annual lists shall be made of all children who reside in the township and who are enrolled in the schools of each district lying wholly or partly in that township, which lists shall be made in accordance with Section 29-3-121. Municipal separate school districts shall be entitled to their pro rata part of such funds in the same manner as other school districts.

(3) Where there is no child residing in a township in which funds are available for distribution and where one or more school districts embrace all or part of any such township, such funds shall be distributed in the following manner:

(a) Where any such township is located wholly within one (1) school district, the available township funds shall be distributed to that school district.

(b) Where any such township having such funds available for distribution is located either in whole or in part in two (2) or more school districts, such available funds shall be distributed to the two (2) or more school districts in proportion to the number of children residing in that part of the two (2) or more school districts which is common or coextensive to each of the school districts, distribution being made on the basis of the enrollment of the school children in their respective school districts.

(4) The school district having jurisdiction and control of the sixteenth section or lieu lands in the township (the "custodial school district") shall pay

to each other school district lying wholly or partly in the township which is entitled to a part of the township funds the district's pro rata share of the available township funds, as determined from the lists of children prepared pursuant to Section 29-3-121, promptly after collecting such funds. The custodial school district shall make its books and records pertaining to the income and funds of any shared township available for inspection and copying to all other school districts sharing in the income from the township upon reasonable notice of such request. Any district entitled to such funds which is not paid promptly may assert a claim against the custodial school district for its share of the funds not later than twelve (12) months from the end of the calendar year in which the custodial school district collected such funds.

HISTORY: Codes, 1942, § 6606-02; Laws, 1954, ch. 258, § 2; Laws, 1955 Ex Sess, ch. 49, § 1; Laws, 1999, ch. 517, § 1, eff from and after July 1, 1999.

Cross References — Annual lists of children enrolled in school district, see § 29-3-121.

Preparation of annual listing of children residing in districts required before township funds can be expended by custodial school district or paid over to school districts as provided in §§ 29-3-115 through 29-3-123, see § 29-3-123.

OPINIONS OF THE ATTORNEY GENERAL

If the proper lists are not presented, then sixteenth section funds cannot be disbursed to the Bay/Waveland School District by the Hancock County School District pursuant to the statutory scheme; in such case the funds could only be distributed between the school districts pursuant to the order of a court of competent jurisdiction in an actual case in controversy between the two school districts. Wyly, July 2, 1999, A.G. Op. #99-0317.

A county school district may not include transfer students in its list prepared pursuant to Section 29-3-121 since transfer students do not meet both the residence and enrollment criteria. Smith, Feb. 18, 2000, A.G. Op. #2000-0035.

Where revenue is shared with another school district from a section that is in a township containing more than one school district, any funds received from a shared section must be divided between the school districts based on the annual lists of school children. Cheney, May 16, 2003, A.G. Op. 03-0163.

§ 29-3-121. Superintendent of school district to make lists; recount; costs of recount.

It shall be the duty of the superintendent of each school district to make or cause to be made annual lists of the children enrolled in the schools of such district and who reside in such district, which lists shall be based upon the end of the first month enrollment required to be reported to the State Department of Education for the then current school year. The lists shall be made separately as to the townships in which such children reside. Such lists shall be filed with the superintendent of the custodial school district on or before December 31 of each year, and the lists shall be used in making the division of the available funds of each township during the ensuing calendar year, as provided by Section 29-3-119. The superintendent of the custodial school district shall make such lists available, upon request, to each school district sharing in the revenues of the township. Any school district failing to timely provide the list to the superintendent of the custodial school district shall forfeit its right to such funds unless the school board of the custodial school district and the school board of the other district or districts entitled to such funds have executed a written agreement providing for the distribution of such funds in a manner agreed upon by the school districts. All such lists shall be retained and preserved by the superintendent of the custodial school district as a public record. Such lists shall not be made, however, as to any township which is wholly within one (1) school district. If any superintendent of a school district participating in the division of such funds shall challenge in writing the accuracy of any such list, the Office of the State Auditor, upon receipt of such challenge, may, in its discretion, order and arrange for and supervise a recount of the children enrolled in the schools of such district and who reside in such district. All costs incurred in conducting the recount shall be borne by the challenging district and the district in which the recount is conducted on a pro rata basis, as determined from the results of the recount. Such costs may be paid from the school district's share of the available township funds. Such recount, when obtained, shall supersede the original list for the purposes of Sections 29-3-115 through 29-3-123.

HISTORY: Codes, 1942, § 6606-03; Laws, 1954, ch. 258, § 3; Laws, 1999, ch. 517, § 2, eff from and after July 1, 1999.

Cross References — Lists made in accordance with this section to be used in determining division of funds among school districts, see § 29-3-119.

OPINIONS OF THE ATTORNEY GENERAL

If the proper lists are not presented, then sixteenth section funds cannot be disbursed to the Bay/Waveland School District by the Hancock County School District pursuant to the statutory scheme; in such case the funds could only be distributed between the school districts pursuant to the order of a court of competent jurisdiction in an actual case in controversy between the two school districts. Wyly, July 2, 1999, A.G. Op. #99-0317.

A county school district may not include transfer students in its list prepared pursuant to Section 29-3-121 since transfer students do not meet both the residence and enrollment criteria. Smith, Feb. 18, 2000, A.G. Op. #2000-0035.

Where revenue is shared with another school district from a section that is in a township containing more than one school district, any funds received from a shared section must be divided between the school districts based on the annual lists of school children. Cheney, May 16, 2003, A.G. Op. 03-0163.

§ 29-3-123. Lists of educable children required before payment of funds.

It shall be unlawful for any township funds to be expended by the custodial school district or paid over to school districts as provided in Sections 29-3-115 through 29-3-123, where there are two (2) or more school districts or parts of school districts in the township until lists of the children residing in each district or part of district within such township who are enrolled in the schools thereof have been made as required under Section 29-3-121. Such lists shall be made annually before any payment of the expendable sixteenth section revenues shall be made to school districts as provided in Sections 29-3-115 through 29-3-123. Any member of a local school board or any superintendent of a school district who shall order the payment of such funds or who shall issue a pay certificate therefor in violation of the provisions of this section shall be liable upon his bond for the amount so paid.

Nothing in Sections 29-3-115 through 29-3-123 shall repeal or restrict the expenditure of funds by the Board of Supervisors of Claiborne County under Chapters 661, 662 and 663, Laws of 1950; or the expenditure by the Board of Supervisors of Adams County of any funds under Chapter 615, Laws of 1950.

HISTORY: Codes, 1942, § 6606-06; Laws, 1954, ch. 258, § 6; Laws, 1955 Ex Sess, ch. 49, § 2; Laws, 1999, ch. 517, § 3, eff from and after July 1, 1999.

Cross References — Making of annual lists of children enrolled in school district, see § 29-3-121.

OPINIONS OF THE ATTORNEY GENERAL

If the proper lists are not presented, then sixteenth section funds cannot be disbursed to the Bay/Waveland School District by the Hancock County School District pursuant to the statutory scheme; in such case the funds could only be distributed between the school districts pursuant to the order of a court of competent jurisdiction in an actual case in controversy between the two school districts. Wyly, July 2, 1999, A.G. Op. #99-0317.

Where revenue is shared with another school district from a section that is in a township containing more than one school district, any funds received from a shared section must be divided between the school districts based on the annual lists of school children. Cheney, May 16, 2003, A.G. Op. 03-0163.

§ 29-3-125. Repealed.

Repealed by Laws, 1978, ch. 525, § 55, eff from and after July 1, 1978.
§ 29-3-125. [Codes, 1942, § 6626; Laws, 1934, ch. 271]

Editor's Notes — Former § 29-3-125 pertained to uninhabited townships.

§ 29-3-127. Inter-county townships.

Where a township is divided so that parts are situated in different counties, the county in which the sixteenth section or lands in lieu thereof may be situated shall have jurisdiction thereof and of the funds derived from it; and if the section or land in lieu thereof be in several counties, each county has jurisdiction of the part lying in it, or the counties may co-operate in the management thereof. In any case the fund shall be accounted for with each county according to the number of educable children in the part of the township in it as compared with the whole number in the township. Any county now having and hereafter receiving and collecting funds belonging to another county shall immediately thereafter pay over such funds, transfer and sign all notes, deeds of trust, and security for funds loaned out, to the depository of the county entitled thereto.

HISTORY: Codes, 1930, § 6774; 1942, § 6614; Laws, 1924, ch. 283; Laws, 1930, ch. 278.

OPINIONS OF THE ATTORNEY GENERAL

School boards do have to account for past funds received and pay those funds to the other board in accordance with the last sentence of Section 29-3-127; however, see the statute of limitations provided in Section 29-3-119(4) regarding the allocation of funds among districts. Riley, Nov. 18, 2005, A.G. Op. 05-0545.

§ 29-3-129. Division of damages to land in two school districts.

Where sixteenth section or lieu land allotted the township in lieu of a sixteenth section shall lie in two (2) or more school districts and trespass shall have been committed on said sixteenth section or lieu land, and suit shall have been filed and money collected because of said trespass or for any cause, it shall be the duty of the board of education where the money shall have been collected and deposited to the credit of the said district, unless the decree or order of the court provides otherwise, to divide said money so collected so that each county shall receive its share in proportion to the area in said sixteenth section lying in or allotted to each county; and the money, when so paid over to the respective district or districts, shall be placed to the credit of said township fund, to be invested and the interest therefrom to be used as now provided by law. This method of division provided herein shall apply to moneys collected and paid into any district treasury.

HISTORY: Codes, 1942, § 6615; Laws, 1932, ch. 326; Laws, 1978, ch. 525, § 46, eff from and after July 1, 1978.

Cross References — Damages for trespass to public lands, see § 29-1-19.
Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.
Posting of leased land against trespassers, see § 29-3-54.
Trespass generally, see § 95-5-27.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Lands §§ 109 et seq.

CJS.
73A C.J.S., Public Lands §§ 5-11.

§ 29-3-131. Expenses incurred.

The expenses incurred by the board of education for the performance of their duties under the provisions of this chapter shall be paid out of proper sixteenth section funds.

The boards of education are also authorized to expend reasonable sums from the school land trust expendable funds, for school land management assistance when the needed assistance is not available from the Secretary of State or other public agencies within the state.

HISTORY: Codes, 1930, § 6783; 1942, § 6624; Laws, 1926, ch. 324; Laws, 1930, ch. 278; Laws, 1978, ch. 525, § 47; Laws, 1988, ch. 518, § 20, eff from and after July 1, 1988.

Cross References — Definitions of "board of education" and "superintendent of education," see § 29-3-1.1.

JUDICIAL DECISIONS

1. In general.

Under former statute county might sue for waste committed in cutting timber from 16th section. Jefferson Davis County v. James-Sumrall Lumber Co., 94 Miss. 530, 49 So. 611, 1909 Miss. LEXIS 375 (Miss. 1909), limited, Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

Provisions of Code concerning 16th sections do not constitute a prohibited delegation of power. Jefferson Davis County v. James-Sumrall Lumber Co., 94 Miss. 530, 49 So. 611, 1909 Miss. LEXIS 375 (Miss. 1909), limited, Bd. of Educ. v. Warner, 853 So. 2d 1159, 2003 Miss. LEXIS 311 (Miss. 2003).

§ 29-3-132. Effect of chapter on power of other entities to make zoning and land use laws, ordinances or regulations.

Nothing in this chapter shall be construed to supersede or modify any power or authority of a county, municipality, or combination thereof, or any zoning or planning board or agency, or similar public authority, to adopt and enforce zoning or land use laws, ordinances or regulations.

HISTORY: Laws, 1978, ch. 525, § 52, eff from and after July 1, 1978.

Cross References — Zoning, planning and subdivision regulation by local governments, see §§ 17-1-1 et seq.

RESEARCH REFERENCES

ALR.

Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

§ 29-3-133. Construction of roads or streets upon lands in certain counties; authorization.

The board of supervisors of any county within the state having a population of more than two hundred thousand (200,000) according to the latest federal census, upon receipt of a resolution adopted by the county board of education of any such county requesting it so to do, is authorized and empowered to construct roads or streets upon any sixteenth section lands lying within the boundaries of any municipality in such county having a population of more than one hundred fifty thousand (150,000) according to the latest federal census.

HISTORY: Laws, 1974, ch. 370, § 1, eff from and after passage (approved March 18, 1974).

Cross References — Payment of cost of construction of roads or streets, see § 29-3-135.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
39 Am. Jur. 2d, Highways, Streets, and Bridges §§ 62, 69.	39A C.J.S., Highways § 38. 40 C.J.S., Highways §§ 179, 180 et seq.

§ 29-3-135. Construction of roads or streets upon lands in certain counties; payment of cost.

The cost of the construction of any roads or streets performed under the terms of Section 29-3-133 shall be paid upon the order of the board of supervisors of any such county by the county board of education of such county out of any funds which would otherwise be paid over to the school district entitled to the revenues from the sixteenth section land upon which any such construction is done.

HISTORY: Laws, 1974, ch. 370, § 2, eff from and after passage (approved March 18, 1974).

§ 29-3-137. Disbursement of funds to Chickasaw counties; powers and duties of State Department of Education; issuance of promissory notes by school districts in Chickasaw counties to purchase school buses.

(1) Beginning with the 1985-1986 fiscal year the Legislature of the State of Mississippi shall appropriate to the State Department of Education a sum of One Million Dollars ($1,000,000.00) to be disbursed to the Chickasaw counties, and an additional One Million Dollars ($1,000,000.00) each succeeding fiscal year thereafter until a maximum appropriation of Five Million Dollars ($5,000,000.00) is made for the fiscal year 1989-1990. Beginning with the appropriation for the 1990-1991 fiscal year, the amount appropriated under the provisions of this section shall not exceed the total average annual expendable revenue per teacher unit received by the Choctaw counties from school lands, or Five Million Dollars ($5,000,000.00), whichever is the lesser.

(2) The State Department of Education is hereby authorized, empowered and directed to allocate for distribution such funds appropriated each year under subsection (1) of this section in proportion to the number of teacher units allotted under the minimum program, to such school districts affected by the sale of Chickasaw cession school lands. School districts not wholly situated in Chickasaw cession affected territory shall receive a prorated amount of such allocation based on the percentage of such lands located within the district. Provided further, that the State Department of Education shall in addition deduct from each affected school district's allocation the amount such district

shall receive from interest payments from the Chickasaw School Fund under Section 212, Mississippi Constitution of 1890 for each fiscal year. The total number of teacher units in the Chickasaw counties shall be computed by the State Department of Education. The department shall document the foregoing computation in its annual budget request for the appropriation to the Chickasaw School Fund, and shall revise its budget request under such formula as the average annual revenues from sixteenth section school lands fluctuate.

(3) [Repealed]

HISTORY: Laws, 1985, ch. 23, § 1; Laws, 1988, ch. 432, eff from and after passage (approved April 25, 1988).

Editor's Notes — Former subsection (3), which authorized the school board of any school district within the Chickasaw cession territory to issue certain promissory notes, and prescribed the use of, interest on and date the principal of and interest on the notes was to become due, was repealed by its own terms, effective June 30, 1991.

JUDICIAL DECISIONS

1. In general.

Claim that sale of Chickasaw Cession School Lands and unwise investment of proceeds had abrogated state's trust obligation to hold those lands for benefit of school children in perpetuity are barred by Eleventh Amendment, however, allegation that state's unequal distribution of benefits of school lands is denial of equal protection is not so barred, as essence of equal protection claim is present disparity in distribution of benefits of state held assets and not state's past actions, and alleged differential treatment violates equal protection only if not rationally related to legitimate state interest; differential financing resulting from disparity and distribution of benefits of state held assets is attributable to state decision to divide state resources unequally among school districts, and if not rationally related to legitimate state interests is unconstitutional and resolution of this question is dependent upon whether federal law requires state to allocate economic benefits of school lands to schools and townships in which those lands are located and whether such federal law is itself constitutional. Papasan v. Allain, 478 U.S. 265, 106 S. Ct. 2932, 92 L. Ed. 2d 209, 1986 U.S. LEXIS 127 (U.S. 1986).

§ 29-3-139. Disbursement of funds under Section 29-3-137 as affecting sums paid under Section 212 of Mississippi Constitution.

In no event shall any sums to be paid to the Chickasaw counties on schools therein pursuant to Section 212, Mississippi Constitution of 1890, be reduced by operation of this to an amount below that required by Section 212. It is the intent of the Legislature to increase the annual appropriation to the Chickasaw counties in order to equitably compensate them for each acre of sixteenth section land which they have lost through sale by the state.

HISTORY: Laws, 1985, ch. 23, § 2, eff from and after July 1, 1985.

Cross References — Constitutional provisions regarding Chickasaw School Fund and other educational trust funds, see Miss. Const. Art. 8, § 212.

JUDICIAL DECISIONS

1. In general.

Claim that sale of Chickasaw Cession School Lands and unwise investment of proceeds had abrogated state's trust obligation to hold those lands for benefit of school children in perpetuity are barred by Eleventh Amendment, however, allegation that state's unequal distribution of benefits of school lands is denial of equal protection is not so barred, as essence of equal protection claim is present disparity in distribution of benefits of state held assets and not state's past actions, and alleged differential treatment violates equal protection only if not rationally related to legitimate state interest; differential financing resulting from disparity and distribution of benefits of state held assets is attributable to state decision to divide state resources unequally among school districts, and if not rationally related to legitimate state interests is unconstitutional and resolution of this question is dependent upon whether federal law requires state to allocate economic benefits of school lands to schools and townships in which those lands are located and whether such federal law is itself constitutional. Papasan v. Allain, 478 U.S. 265, 106 S. Ct. 2932, 92 L. Ed. 2d 209, 1986 U.S. LEXIS 127 (U.S. 1986).

§ 29-3-141. County board of education to ascertain whether county has title to Chickasaw lands; lease of lands.

Notwithstanding the provisions of Section 29-1-63, it shall be the duty of the county board of education in any county within the Chickasaw cession to ascertain whether or not such county has title to any Chickasaw lands to which it may, by law, be entitled by virtue of long-term leases. If it is determined that any such land does exist, the board shall proceed to settle the title to such property and, if possible, lease the land pursuant to the provisions of Chapter 3, Title 29, Mississippi Code of 1972, applicable to the management of sixteenth section and lieu lands.

HISTORY: Laws, 1985, ch. 23, § 3, eff from and after July 1, 1985.

SIXTEENTH SECTION DEVELOPMENT AUTHORITIES

Sec.

29-3-151. Declaration of purpose.
29-3-153. Definitions.
29-3-155. Creation of sixteenth section development authority; acquisition of easements; interim financing.
29-3-157. Selection of trustees of authority; vacancies; qualifications; compensation.
29-3-159. General powers of authority.
29-3-161. Issuance of bonds authorized.
29-3-163. Payments on bonds when net revenues are insufficient.
29-3-165. Sale of bonds.
29-3-167. Issuance of bonds to defray expenses of authority.
29-3-169. General terms and conditions as to bonds.
29-3-171. Validation of bonds.
29-3-173. Cooperation with other governmental agencies.
29-3-174. Immunity from tort actions except for wilful or gross negligence.
29-3-175. Exemptions from state taxation.
29-3-177. Bonds as legal investments and as security for deposits of public funds.

Sec.
29-3-179. Construction contracts.
29-3-181. Deposit of authority's funds.
29-3-183. Bond proceeds may be utilized to pay preliminary expenses.

§ 29-3-151. Declaration of purpose.

The purpose of Sections 29-3-151 through 29-3-183 is to authorize the improvement, development, management and maintenance of sixteenth section lands, or lands granted in lieu thereof, within any county in Mississippi with a population in excess of two hundred thousand (200,000) at the time of the 1970 census, in order that such lands may be made suitable for leasing for commercial, industrial, and/or recreational use, including the authority necessary to finance the improvement and development thereof and to manage, maintain and lease said lands in order to derive the maximum public benefit and to earn maximum income from the lands for the public schools receiving the income. No lease shall be for a term in excess of twenty-five (25) years.

HISTORY: Laws, 1973, ch. 498, § 1; Laws, 1978, ch. 467, § 1, eff from and after July 1, 1978.

§ 29-3-153. Definitions.

Whenever used in Sections 29-3-151 through 29-3-183, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall be given the following respective definitions:

(a) "Trustees" shall refer to the board of trustees of the sixteenth section development authority.

(b) "Authority" shall refer to the sixteenth section development authority.

(c) "Project" shall refer to the area served by and to the facilities for use by commerce and related activity, such as water supply, storage and distribution; sewage and waste collection, transport, treatment and disposal; waste and refuse collection and disposal; gas, fuel and power supply and distribution; railroad construction, operation and maintenance; fire prevention, protection and extinguishing; storm drainage, collection and disposal; site preparation and development of commercially oriented sixteenth section lands, or lands granted in lieu thereof, and to the sixteenth section, or lands granted in lieu thereof, authorized to be developed by Sections 29-3-151 through 29-3-183.

(d) "Development" shall mean the planning, surveying, platting, financing, improving and/or otherwise making sixteenth section lands, or lands granted in lieu thereof, suitable for commercial, industrial, and/or recreational use.

(e) "Sealed bid procedure" shall refer to the procedure designated under Section 31-19-25, as supplemented by appropriate sections of Sections 29-3-151 through 29-3-183.

HISTORY: Laws, 1973, ch. 498, § 2; ch. 467, § 2, eff from and after July 1, 1978.

§ 29-3-155. Creation of sixteenth section development authority; acquisition of easements; interim financing.

The board of supervisors of any county with a population of two hundred thousand (200,000) or more shall have the authority to create, by appropriate order spread on its minutes and approved by vote of at least three-fifths (⅗) of its members, a sixteenth section development authority for the purpose of developing all or any part of a sixteenth section, or lands granted in lieu thereof, controlled by the board; provided, however, that said authority shall not be created by said board unless and until the county school board and, in the event the sixteenth section or lands granted in lieu thereof is located within a municipal separate school district, the trustees of the municipal separate school district submit to the board a resolution, properly adopted, requesting the creation of said authority and designating the sixteenth section, or lands granted in lieu thereof, to be developed and leased. The order shall designate the sixteenth section, or lands granted in lieu thereof, to be developed in whole or in part by the authority; provided, however, that the order shall designate only one sixteenth section, or one section of land granted in lieu thereof, to be developed in whole or in part by the authority.

The board of supervisors of the county may acquire by condemnation any necessary easements for traffic thoroughfares or utility rights-of-way upon specific recommendation and request by the trustees, but for no other purpose shall the right of condemnation be allowed. Any condemnation award shall be paid from the funds of the authority.

The county school board and, in the event the sixteenth section or lands granted in lieu thereof is located within a municipal separate school district, the trustees of the municipal separate school district are specifically authorized to lend to the authority such funds for interim financing of development as may be available to the said board and trustees and deemed desirable. In the event that any such loan is made by the county school board and the trustees of the municipal separate school district, the participation of each in such loan shall be determined by the percentage of revenue from the sixteenth section, or lands granted in lieu thereof, to be developed by the authority which each received in the most prior year of receipt.

HISTORY: Laws, 1973, ch. 498, § 3, eff from and after passage (approved April 16, 1973).

§ 29-3-157. Selection of trustees of authority; vacancies; qualifications; compensation.

All powers of the authority shall be exercised by a board of trustees to be selected and composed as follows:

(a) There shall be five (5) members of the board of trustees. One (1) member shall be appointed by the board of supervisors to serve one (1) year and four (4) members shall be appointed by the county board of education, one (1) of whom shall serve two (2) years, one (1) of whom shall serve three

(3) years, one (1) of whom shall serve four (4) years, and one (1) of whom shall serve five (5) years after June 30, 1973; provided, however, that in the event any part of the sixteenth section, or lands granted in lieu thereof, to be developed by the authority is located within the corporate limits of any municipal separate school district, then the aforesaid two (2) members of the authority serving an initial term of three (3) and five (5) years shall be appointed by the trustees of the municipal separate school district. The terms of office of the respective members shall expire June 30 of each year, and after their initial term, each member shall be appointed to a term of five (5) years or until his successor has been appointed and has accepted. The superintendent of the Hinds County School Board shall be an ex officio member of the board and shall act as chairman thereof. The member of the authority serving the initial five-year term shall be the secretary of the board of trustees. In the event a vacancy occurs, the appointment or the unexpired term shall be made in the same manner as provided for the original appointment.

(b) Members of the board of trustees of the authority may succeed themselves upon reappointment by a two-thirds (⅔) vote of the appointing authority.

(c) No member shall be appointed as a trustee who is not a qualified elector and bona fide resident of the county.

(d) Each member of the board of trustees shall take and subscribe to the general oath of office required by Section 268 of the Constitution of the State of Mississippi before the chancery clerk of the county in which the authority is created that he will faithfully discharge the duties of the office, which oath shall be filed with the said clerk and by him preserved.

(e) Each trustee not being paid for the day of the meeting by a political subdivision of the state shall receive not more than Twenty-two dollars and Fifty Cents ($22.50) per diem while actually performing the business of the authority and Ten Cents (10¢) per mile for distance traveled while actually on the business of the authority. Provided, however, that the compensation herein authorized shall apply for not more than fourteen (14) days per member during any calendar year.

HISTORY: Laws, 1973, ch. 498, § 4, eff from and after passage (approved April 16, 1973).

§ 29-3-159. General powers of authority.

The authority, through its trustees, is hereby empowered:

(a) To develop land or any interest in land or property under its jurisdiction.

(b) To acquire, construct, improve, reconstruct, cause to be constructed, extend, expand, maintain, use and operate all facilities of any kind necessary or convenient for the purpose for which the authority was created, including, but not limited to, drainageways, ditches, storm sewers, sanitary sewers, streets, sidewalks, water mains, fire protection systems, gas, power and light systems, trash, waste and garbage disposal facilities, and such other utilities and services as required in the furtherance of the purposes of Sections 29-3-151 through 29-3-183. Provided, however, the right to acquire, construct, improve, reconstruct, cause to be constructed, extend, expand, maintain, use and operate all facilities or utilities of all kinds shall not apply in any case where an existing utility is furnishing a similar service, unless and until the public service commission has determined, after hearing, that the service being furnished by such existing utility is not reasonably adequate.

(c) To lease such property or interest in property and under such terms and conditions at such time as the benefit has been accomplished and/or the improvements completed; provided, however, that no property shall be leased for less than the fair rental value thereof as determined by a real estate board appraiser; provided further, that the authority may lease such property for recreational purposes to any of the governmental entities authorized by Section 29-3-173, under such terms and conditions as may be agreed upon by the trustees.

(d) To sue and be sued in its corporate name.

(e) To adopt, use and alter a corporate seal.

(f) To make bylaws for the management and regulation of its affairs.

(g) To make or cause to be made or to cooperate in making engineering surveys, feasibility studies and cost-benefit estimates relating to the providing of any services within the development.

(h) To apply for, and accept, government grants and loans, whether federal, state or local, when such are available; to borrow from other federal, state and municipal agencies and from private persons or groups, including corporations; and to expend or utilize such funds so obtained in the furtherance of the objectives of Sections 29-3-151 through 29-3-183.

(i) To maintain, use and operate any and all property of any kind, real, personal or mixed, or any interest therein, within the boundaries of the development and necessary for the purposes of Sections 29-3-151 through 29-3-183.

(j) To make contracts and to execute instruments necessary to the exercise of the powers, rights, privileges and functions conferred upon the authority by Sections 29-3-151 through 29-3-183.

(k) To employ planners, engineers, attorneys, fiscal advisors, appraisers and all other agents and employees necessary to the exercising of the powers, rights, privileges or functions conferred upon the authority by Sections 29-3-151 through 29-3-183, and to properly finance, construct, operate and maintain the project and the services it renders and to pay reasonable compensation for such services. The trustees shall have the right to employ a general manager who shall, at the discretion of the trustees, have the power to employ and discharge employees.

(*l*) To make such contracts in the issuance of bonds as may be necessary to insure the marketability thereof.

(m) To fix and collect charges and rates for any services, facilities or commodities furnished by it in connection with said project and to impose penalties for failure to pay such charges and rates when due.

(n) Subject to the provisions of Sections 29-3-151 through 29-3-183, from time to time, to lease any property of any kind, real, personal or mixed, or any interest therein, within the project area or acquired outside the project area as authorized by said sections for the purpose of furthering the business of the authority.

HISTORY: Laws, 1973, ch. 498, § 5; Laws, 1978, ch. 467, § 3, eff from and after July 1, 1978.

RESEARCH REFERENCES

ALR.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

§ 29-3-161. Issuance of bonds authorized.

The board of trustees of the authority is hereby authorized and empowered to issue bonds of the authority for the purpose of paying the costs of acquiring, owning, constructing, operating, repairing and maintaining the projects and works specified herein, including related facilities, and including all financing and financial advisory charges, interest during construction, engineering, legal, and other expenses incidental to and necessary for the foregoing, or for the carrying out of any power conferred by Sections 29-3-151 through 29-3-183. Said board of trustees is authorized and empowered to issue such bonds at such times and in such amounts as shall be provided for by resolution of the said board of trustees.

Provided, however, the bonds herein authorized shall not be issued until the board shall have published notice of its intention to issue same; said notice to be published once each week for three (3) consecutive weeks in some newspaper in the county, but not less than twenty-one (21) days nor more than sixty (60) days intervening between the time of the first notice and the meeting at which said board proposes to issue such bonds. If, within the time of giving notice, not less than fifteen hundred (1500) of the qualified electors of the county shall file a written petition with the board of trustees of the authority protesting the issuance of the bonds, the board of supervisors shall call an election on the question of issuing the bonds. Such election shall be held and conducted by the election commissioners of the county as nearly as may be in conformity with the provisions of Sections 19-9-13 through 19-9-17, Mississippi Code of 1972, governing bond elections, in which election all qualified electors of the county may vote.

All such bonds so issued by said authority shall be secured solely by pledge of the net revenues which may now or hereafter come to the authority and by pledge of the rental income from the sixteenth section, or lands granted in lieu thereof, to be developed by the authority which may now or hereafter come to the county school board and/or the trustees of the municipal separate school district. Such bonds shall not constitute general obligations of the State of

Mississippi, or of the county creating the authority, and such bonds shall not be secured by a pledge of the full faith, credit and resources of said state or of said county. "Revenues" as used in Sections 29-3-151 through 29-3-183 shall mean all charges, tolls, rates, gifts, grants, moneys, rentals and proceeds from the leasing for commercial and/or industrial use of the lands actually developed by the authority under said sections, and all other funds coming into the possession of the authority by virtue of the provisions of said sections, except the proceeds from the sale of the bonds issued hereunder. "Net revenues" as used in Sections 29-3-151 through 29-3-183 shall mean the revenues after payment of costs and expenses of management and maintenance of the project and related facilities. "Rental income" shall mean all rentals, moneys or funds derived pursuant to Sections 29-3-27 et seq., Mississippi Code of 1972, from the sixteenth section, or lands granted in lieu thereof, to be developed by the authority, except such rentals, moneys, or funds derived from the leasing for commercial and/or industrial use of the lands actually developed by the authority.

HISTORY: Laws, 1973, ch. 498, § 6, eff from and after passage (approved April 16, 1973).

§ 29-3-163. Payments on bonds when net revenues are insufficient.

In the event net revenues of the project are insufficient to pay fully the principal and interest on bonds when due, the authority is hereby specifically authorized to pay, and shall pay, all or the remainder of said principal and interest from rental income. The county school board and the trustees of the municipal separate school district are hereby specifically authorized to pay, and shall pay, to the authority, if necessary, such sums as are sufficient to pay all or the remainder of said principal and interest from rental income, and the part of such sum to be paid by the said county school board and the trustees of the municipal separate school district, respectively, to the authority for this purpose shall be determined by the percentage of revenue from the sixteenth section, or lands granted in lieu thereof, to be developed by the authority which each received in the most prior year of receipt.

HISTORY: Laws, 1973, ch. 498, § 7, eff from and after passage (approved April 16, 1973).

Cross References — Definitions of "net revenues" and "rental income," see § 29-3-161.

§ 29-3-165. Sale of bonds.

On all revenue bonds issued pursuant to the provisions of Sections 29-3-151 through 29-3-183 and hereafter sold, the trustees shall advertise them for sale on sealed bids for at least two (2) times in a newspaper within the county in which the bonds are to be sold, the first publication to be made at least ten (10) days preceding the date fixed for the reception of bids, such notice to give the time and place of sale. The procedure further demands that each bid shall be accompanied by a cashier's check, certified check, or exchange payable to the authority, issued or certified by a bank located in the state in the amount of not less than two percent (2%) of the par value of the bonds offered for sale, as a guaranty that the bidder will carry out his contract and purchase the bonds if the bid is accepted. If the successful bidder fails to purchase the bonds pursuant to his bid and contract, the amount of such good faith check shall be retained by the authority and covered into the proper fund as liquidated damages for such failure.

HISTORY: Laws, 1973, ch. 498, § 8, eff from and after passage (approved April 16, 1973).

§ 29-3-167. Issuance of bonds to defray expenses of authority.

The board of trustees, subject to the call for an election as outlined in Section 29-3-161, is authorized and empowered, in its discretion, for the purpose of providing funds to assist in defraying expenses of the authority created under Sections 29-3-151 through 29-3-183, to issue from time to time negotiable revenue bonds of the authority in such amount or amounts as its board of trustees shall deem necessary; provided, however, that not more than the aggregate amount of One Million Five Hundred Thousand Dollars ($1,500,000.00) of said bonds shall be outstanding at any one (1) time.

HISTORY: Laws, 1973, ch. 498, § 9, eff from and after passage (approved April 16, 1973).

§ 29-3-169. General terms and conditions as to bonds.

All such bonds provided for by Sections 29-3-151 through 29-3-183 shall be securities within the meaning of Article 8 of the Mississippi Uniform Commercial Code, being Sections 75-8-101 et seq. They shall be lithographed or engraved and printed in two (2) or more colors to prevent counterfeiting. They shall be in denominations of not less than One Thousand Dollars ($1,000.00), and may be registered as issued. Each such bond shall specify on its face the purpose for which it was issued, the total amount authorized to be issued and the interest on the bond. Such bonds shall bear interest at such rate or rates as may be determined by the sale of such bonds, provided that the bonds of any issue shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103. They shall mature annually in such amounts and at such times as shall be provided by the resolution of the board of trustees. Provided, however, that no bonds shall have a longer maturity than twenty-five (25) years from date of issuance, and the first maturity date thereof shall be not more than five (5) years from the date of such bonds. The denomination, form and place or places of payment of such bonds shall be fixed in the resolution of the board of trustees of the authority. Such bonds shall be signed by the chairman and the secretary of the board of trustees, with the corporate seal affixed thereto, but the coupons may bear only the facsimile signatures of such chairman or secretary. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid (all bonds of the same maturity shall bear the same rate of interest); all interest accruing on such bonds so issued shall be payable semiannually, or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and supplemental coupons will not be permitted; and no interest coupon shall vary more than twenty-five percent (25%) in interest rate from any other interest coupon in the same bond issue.

Each interest rate specified in any bid must be in a multiple of one-eighth of one percent (⅛ of 1%) or one-tenth of one percent (1/10 of 1%) and a zero rate of interest cannot be named.

Notice of the sale of any such bonds shall be published at least two (2) times, with the first publication not less than fourteen (14) days prior to the date of sale, and shall be so published in one or more newspapers having a general circulation in the area in which the development is located and in one or more other newspapers or financial journals with a large circulation. One (1) proof of publication shall be filed in the minutes of the board of trustees.

Such bonds may be called in, paid and redeemed as authorized in the resolution authorizing the issue on any interest date prior to maturity upon not less than thirty (30) days' notice to the paying agent or agents designated in such bonds. Provided, however, that in no case shall any premiums exceed seven percent (7%) of the face value of such bonds.

All bonds issued by the authority shall contain in substance a statement to the effect that they are secured solely by a pledge of the net revenues and by pledge of rental income, and that they do not constitute general obligations of the State of Mississippi or of the county in which the development is located, and are not secured by a pledge of the full faith, credit and resources of said state or of such county.

All such bonds as provided for herein shall be sold under the sealed bid procedure at public sale as now provided in Section 31-19-25, Mississippi Code of 1972. No such sale shall be at a price so low as to require the payment of interest on the money received therefor at more than a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103.

Sections 29-3-151 through 29-3-183 shall be full and complete authority for the issuance of the bonds provided for herein, and no restriction or limitation otherwise prescribed by law shall apply except as included in statutes governing and controlling issuance of all municipal bonds.

Provided, however, the board of trustees shall have the authority to enter into cooperative agreements with the state or federal government, or both, and to execute and deliver at private sale notes or bonds as evidence of such indebtedness in the form and subject to the terms and conditions as may be imposed by the state or federal government, or both, and to pledge the income and revenues of the authority in payment thereof.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

HISTORY: Laws, 1973, ch. 498, § 10; Laws, 1983, ch. 494, § 11; Laws, 1985, ch. 477, § 3, eff from and after passage (approved April 8, 1985).

§ 29-3-171. Validation of bonds.

All bonds issued pursuant to Sections 29-3-151 through 29-3-183 shall be validated as now provided in Sections 31-13-1 through 31-13-11, inclusive, Mississippi Code of 1972.

HISTORY: Laws, 1973, ch. 498, § 11, eff from and after passage (approved April 16, 1973).

§ 29-3-173. Cooperation with other governmental agencies.

The authority shall have authority to act jointly with political subdivisions of the state and agencies, commissions and instrumentalities thereof, with municipalities, and with the federal government and other agencies thereof, in the performance of the purposes and services authorized in Sections 29-3-151 through 29-3-183 upon such terms as may be agreed upon by the trustees.

HISTORY: Laws, 1973, ch. 498, § 12, eff from and after passage (approved April 16, 1973).

§ 29-3-174. Immunity from tort actions except for wilful or gross negligence.

Except for willful or gross negligence, no action or suit sounding in tort arising out of the lease or use of the land for recreational purposes shall be brought or maintained against the authority or the trustees on account of any act or omission done in performance of the purposes and services authorized in Sections 29-3-151 through 29-3-183.

HISTORY: Laws, 1978, ch. 467, § 4, eff from and after July 1, 1978.

Cross References — When state may be sued, generally, see § 11-45-1.

RESEARCH REFERENCES

Am. Jur.
57 Am. Jur. 2d, Municipal, School, and State Tort Liability § 39.

CJS.
81A C.J.S., States §§ 533-543.

§ 29-3-175. Exemptions from state taxation.

The accomplishment of the purposes stated in Sections 29-3-151 through 29-3-183 being for the benefit of the people of the county and for the improvement of their properties, the authority, in carrying out the purposes of Sections 29-3-151 through 29-3-183, will be performing an essential public function and shall not be required to pay any tax or assessment on the project and related facilities or any part thereof except as provided herein, and the interest on the bonds issued hereunder shall at all times be free from taxation within this state; and the state hereby covenants with the holders of any bonds to be issued hereunder that the authority shall not be required to pay any taxes or assessments imposed by the state or any of its political subdivisions or taxing districts on improvements funded from the avails of the issue except assessments for municipal utilities benefiting the property.

HISTORY: Laws, 1973, ch. 498, § 13, eff from and after passage (approved April 16, 1973).

§ 29-3-177. Bonds as legal investments and as security for deposits of public funds.

All bonds of the authority shall be and are hereby declared to be legal and authorized investments for public funds of counties, cities, towns, school districts, banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies, and for funds of the Mississippi Public Employees' Retirement System. Such bonds shall be eligible to secure the deposit of any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Mississippi; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value when accompanied by all unmatured coupons appurtenant thereto.

HISTORY: Laws, 1973, ch. 498, § 14, eff from and after passage (approved April 16, 1973).

Cross References — Mississippi Public Employees' Retirement System generally, see §§ 25-11-101 et seq.

§ 29-3-179. Construction contracts.

All construction contracts by the authority where the amount of the contract shall exceed One Thousand Dollars ($1,000.00) shall be made upon at least three (3) weeks' public notice by advertisement in a newspaper of general circulation in the area, which notice shall state the thing to be done and invite sealed proposals, to be filed with the secretary of the authority, to do the work; and in all such cases, before the notice shall be published, the plans and specifications for the work shall be filed with the secretary of the authority and there remain; and the board of trustees of the authority shall award the contract to the lowest bidder who will comply with the terms imposed by such trustees and enter into bond with sufficient sureties to be approved by the trustees in such penalty as shall be fixed by the trustees, but in no case to be less than the contract price, conditioned for the prompt, proper and efficient performance of the contract.

HISTORY: Laws, 1973, ch. 498, § 15, eff from and after passage (approved April 16, 1973).

§ 29-3-181. Deposit of authority's funds.

All funds of the authority shall be deposited in the bank or banks utilized as depositories for other sixteenth section funds.

HISTORY: Laws, 1973, ch. 498, § 16, eff from and after passage (approved April 16, 1973).

§ 29-3-183. Bond proceeds may be utilized to pay preliminary expenses.

The authority is hereby authorized to pay from the proceeds of any bonds issued under the provisions of Sections 29-3-151 through 29-3-183 the preliminary expenses, including engineers' reports, attorneys' fees, and organization or administration expenses and any expenses incurred by the county in planning and creating the project and its development.

HISTORY: Laws, 1973, ch. 498, § 17, eff from and after passage (approved April 16, 1973).

CHAPTER 5.

CARE OF CAPITOL, OLD CAPITOL, STATE OFFICE BUILDINGS AND EXECUTIVE MANSION

In General. 29-5-1
Plaques on Public Buildings. 29-5-151
Regulation of Smoking in Public Buildings. 29-5-160
Capitol Complex Improvement District. 29-5-201

IN GENERAL

Sec.	
29-5-1.	Definitions.
29-5-2.	Responsibilities and duties.
29-5-3.	Use of rooms and apartments of New Capitol.
29-5-5.	Repealed.
29-5-6.	Commission expenses.
29-5-7.	Repealed.
29-5-9.	Employment of receptionist and elevator operator.
29-5-11.	Hours capitol open.
29-5-12.	Landscaping and care of New Capitol grounds.
29-5-13.	Curator of the New Capitol Building; powers and duties of curator; transfer of position of Curator of the New Capitol Building from jurisdiction of Department of Archives and History to the House Management Committee and the Senate Rules Committee.
29-5-15 through 29-5-55.	Repealed.
29-5-57.	Regulation of parking.
29-5-59.	Parking for Governor.
29-5-61.	Parking adjacent to north side of New Capitol Building.
29-5-63.	Parking for state officers, employees, and press.
29-5-65.	Parking for members of Legislature.
29-5-67.	Insignia for automobiles.
29-5-69.	Parking for capitol employees during legislative sessions.
29-5-71.	Signs to indicate reserved parking spaces.
29-5-73.	Parking restrictions.
29-5-75.	Penalty for illegal parking.
29-5-77.	Jurisdiction to enforce laws on state grounds.
29-5-79.	Protection of State Capitol Building.
29-5-81.	Description of state grounds.
29-5-83.	Restrictions on travel and occupancy of grounds.
29-5-85.	Prohibition of sales, signs, placards, and solicitations.
29-5-87.	Injuries to structures or vegetation.
29-5-89.	Discharge of firearms or explosives, setting fires, uttering threatening or abusive language.
29-5-91.	Parades and assemblages, display of banners.
29-5-93.	Penalties.
29-5-95.	Suspension of prohibitions on proper occasions.
29-5-97.	Mayfair Building renamed the Ike Sanford Veterans Affairs Building.
29-5-99.	State Executive Building renamed Heber Ladner Building.
29-5-101.	301 Lamar Street Building renamed the Robert G. Clark, Jr., Building.
29-5-103.	New Justice Building to be named the Carroll Gartin Justice Building.
29-5-105.	Authorization for display of "In God We Trust," the 10 Commandments, and the Beatitudes at public buildings and other government property.

Sec.
29-5-107. Mississippi Department of Transportation Building designated "William J. 'Billy' McCoy Building."
29-5-109. Mississippi Emergency Management Agency Building designated "Haley R. Barbour Building"; portion of public lobby designated "Mississippi Civil Defense/Emergency Management Association Memorial Wall."
29-5-111. Public Employees' Retirement System of Mississippi Building renamed the "Timothy Alan (Tim) Ford Building."
29-5-113. Mississippi Department of Environmental Quality Building renamed the "Patrick Alan Nunnelee Building."

§ 29-5-1. Definitions.

(1) For purposes of this chapter, the term "Office of General Services" shall mean the Governor's office of general services acting through the bureau of capitol facilities.

For purposes of this chapter, "director" shall mean the director of the bureau of capitol facilities of the office of general services.

(2) Wherever the term "capitol commission" appears in the laws of the State of Mississippi, it shall be construed to mean the bureau of capitol facilities of the office of general services.

HISTORY: Codes, 1906, § 4657; Hemingway's 1917, § 3930; 1930, § 4009; 1942, § 8952; Laws, 1904, ch. 109; Laws, 1932, ch. 125; Laws, 1962, ch. 506, § 1, and ch. 588, § 20; Laws, 1964, ch. 571, §§ 1-6; Laws, 1964 1st Sess ch. 21; Laws, 1966, ch. 544, § 1; Laws, 1970, ch. 553, § 1; Laws, 1984, ch. 488, § 7, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — The affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Duties of capitol commission, see § 29-5-3.

Penalty for use of capitol building as a lodging house or sleeping room, see § 97-7-7.

JUDICIAL DECISIONS

1. In general.

Section 57-1-3, which regulates the Board of Economic Development, § 25-11-15, which regulates the Board of Trustees of the Public Employees' Retirement System, § 25-53-7, which regulates the Central Data Processing Authority [Mississippi Department of Information Technology Services], § 25-9-109, which regulates the State Personnel Board, § 43-13-107, which regulates the Medicaid Commission, § 29-5-1, which regulates the Capitol Commission, § 49-5-61, which regulates the Wild Life Heritage Committee, and § 47-5-12 [repealed], which regulates the Board of Corrections, are unconstitutional, insofar as they create executive boards and commissions with legislative members, in violation of Miss. Const. Art. 1 § 2, and, accordingly, named legislators could not constitutionally perform any of the executive functions of those boards and commissions; moreover, §§ 27-103-1 [repealed], 29-5-1, 57-1-3, 43-13-107, 25-53-7, 25-9-109, and 49-5-61, are unconstitutional insofar as they mandate legislative appointments to executive offices. Alexander v. State, 441 So. 2d 1329, 1983 Miss. LEXIS 3007 (Miss. 1983).

RESEARCH REFERENCES

Law Reviews.

1983 Mississippi Supreme Court Review: State legislators serving on state executive boards. 54 Miss. L. J. 46, March 1984.

§ 29-5-2. Responsibilities and duties.

The duties of the Department of Finance and Administration shall be as follows:

(a)(i) To exercise general supervision and care over and keep in good condition the following state property located in the City of Jackson: the New State Capitol Building, the Woolfolk State Office Building and Parking Garage, the Carroll Gartin Justice Building, the Walter Sillers Office Building and Parking Garage, the War Veterans' Memorial Building, the Charlotte Capers Building, the William F. Winter Archives and History Building, the Mississippi Museum Complex, the Gulf, Mobile and Ohio Train Depot (GM&O Depot), the Old State Capitol Building, the Governor's Mansion, the Heber Ladner Building, the Robert E. Lee Office Building, the Robert E. Lee Parking Garage, the former Naval Reserve Center, 515 East Amite Street, 620 North Street, 660 North Street, 700 North State Street, the State Records Center, the Robert G. Clark, Jr. Building, the Mississippi State Fairgrounds Complex, the Robert E. Lee Office Building and Parking Garage, the former Central High Building, as well as all state-owned or leased buildings situated on seat of government property.

(ii) To exercise general supervision and care over and keep in good condition the Dr. Eldon Langston Bolton Building located in Biloxi, Mississippi.

(iii) To exercise general supervision and care over and keep in good condition the State Service Center, located at the intersection of U.S. Highway 49 and John Merl Tatum Industrial Drive in Hattiesburg, Mississippi.

(iv) To exercise general supervision and care over and keep in good condition any property purchased, constructed or otherwise acquired by the State of Mississippi for conducting state business and not specifically under the supervision and care by any other state entity, but which is reasonably assumed the department would be responsible for such, as approved by the Public Procurement Review Board, including, but not limited to:

1. The National Aeronautics and Space Administration (NASA) Shared Services Center and Lockheed Martin Building at Stennis Space Center;
2. The Mississippi Sports Hall of Fame;
3. The Mississippi Crafts Center;
4. The Mississippi Children's Museum; and
5. The Mississippi Arts and Entertainment Center.

(b) To assign suitable office space for the various state departments, officers and employees who are provided with an office in any of the buildings under the jurisdiction or control of the Department of Finance and Administration. However, the assignment of space in the New Capitol Building shall be designated by duly passed resolution of the combined Senate Rules Committee and the House Management Committee, meeting as a joint committee, approved by the Lieutenant Governor and Speaker of the House of Representatives. A majority vote of the members of the Senate Rules Committee and a majority vote of the members of the House Management Committee shall be required on all actions taken, resolutions or reports adopted, and all other matters considered by the full combined committee on occasions when the Senate Rules Committee and the House Management Committee shall meet as a full combined committee.

(c) To approve or disapprove with the concurrence of the Public Procurement Review Board, any lease or rental agreements by any state agency or department, including any state agency financed entirely by federal and special funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration, including space necessary for parking to be used by state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building. In no event shall any employee, officer, department, federally funded agency or bureau of the state be authorized to enter into a lease or rental agreement without prior approval of the Department of Finance and Administration and the Public Procurement Review Board.

The Department of Finance and Administration is authorized to use architects, engineers, building inspectors and other personnel for the purpose of making inspections as may be deemed necessary in carrying out its duties and maintaining the facilities.

(d) To acquire by lease, lease-purchase agreement, or otherwise, as provided in Section 27-104-107, and to assign through the Office of General Services, by lease or sublease agreement from the office, and with the concurrence of the Public Procurement Review Board, to any state agency or department, including any state agency financed entirely by federal and special funds, appropriate office space in the buildings acquired.

(e) [Repealed]

HISTORY: Codes, 1942, §§ 8952-01, 8952-02; Laws, 1972, ch. 326, §§ 2, 3; Laws, 1979, ch. 440; Laws, 1980, ch. 375, § 2; Laws, 1981, ch. 424, § 1; Laws, 1983, ch. 402, § 1; Laws, 1984, ch. 488, § 8; Laws, 1986, ch. 500, § 13; Laws, 1993, ch. 311, § 2; Laws, 1996, ch. 398, § 3; Laws, 1998, ch. 424, § 1; Laws, 2001, ch. 325, § 1; Laws, 2004, ch. 301, § 3; Laws, 2005, ch. 504, § 3; Laws, 2006, ch. 457, § 2; Laws, 2008, ch. 430, § 1; Laws, 2009, ch. 542, § 2; Laws, 2010, ch. 314, § 2; Laws, 2013, ch. 357, § 2; Laws, 2014, ch. 533, § 2; Laws, 2017, ch. 330, § 1, eff from and after passage (approved Mar. 13, 2017).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of the first paragraph of (c) by inserting the word “into” so that “...be authorized to enter a lease or rental agreement...” reads “...be authorized to enter into a lease or rental agreement...” The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor’s Notes — Section 7-1-451 provides that wherever the term “Office of General Services” appears in any law the same shall mean the Department of Finance and Administration.

Laws of 2009, ch. 542, § 1 provides for the purchase of certain parcels of real property in the vicinity of the Capitol Complex described as the “Barefield Property,” the Sun-n-Sand Property, and the property located at 633 North State Street.

Laws of 2009, ch. 557, § 52,provides:

“SECTION 52. (1) The Department of Finance and Administration is authorized to transfer and convey the state-owned 101 Capitol Centre property located at 101 West Capitol Street, Jackson, Mississippi, to Jackson State University.

“(2) The conveyance authorized in this section may be subject to terms and conditions accepted and agreed upon by the Department of Finance and Administration and Jackson State University.”

Laws of 2010, ch. 533, § 44, provides:

“SECTION 44. (1)(a) The Mississippi Development Authority (MDA) is authorized to provide one or more interest-free nonrecourse loans to the City of Jackson, Mississippi, to assist the City of Jackson in paying the costs associated with making repairs, upgrades and improvements to portions of the city’s water and sewer systems infrastructure located in the areas within and in close proximity to the state grounds and lands described in Sections 29-5-2 and 29-5-81, Mississippi Code of 1972. The aggregate amount of all loans made under this section shall not exceed Six Million Dollars ($6,000,000.00), and the time allowed for repayment of a loan shall not exceed seven (7) years.

“(b) The City of Jackson must submit an application to the MDA. The application must include a description of the purpose for which assistance is requested, the amount of assistance requested and any other information required by the MDA.

“(c) The MDA shall have all powers necessary to implement and administer the loans authorized under this section, and the MDA shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this section.

“(2) There is created in the State Treasury a special fund to be designated as the ‘2010 City of Jackson Water and Sewer Systems Loan Fund,‘ which shall consist of the proceeds of general obligation bonds authorized to be issued by this section and funds from any other source designated for deposit into the fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used by the MDA for the purposes described in this section.

“(3) As used in this section, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

“(a) ‘Accreted value’ of any bonds means, as of any date of computation, an amount equal to the sum of (i) the stated initial value of such bond, plus (ii) the interest accrued thereon from the issue date to the date of computation at the rate, compounded semiannually, that is necessary to produce the approximate yield to maturity shown for bonds of the same maturity.

“(b) ‘State’ means the State of Mississippi.

“(c) ‘Commission’ means the State Bond Commission.

“(4) (a) The Mississippi Development Authority, at one time, or from time to time, may declare by resolution the necessity for issuance of general obligation bonds of the State of Mississippi to provide funds for the loans authorized in this section. Upon the adoption of a resolution by the Mississippi Development Authority, declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by this subsection, the Mississippi Development Authority shall deliver a certified copy of its resolution or resolutions to the commission. Upon receipt of such resolution, the commission, in its discretion, may act as the issuing agent, prescribe the form of the bonds, determine the appropriate method for sale of the bonds, advertise for and accept bids or negotiate the sale of the bonds, issue and sell the bonds so authorized to be sold and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The total amount of bonds issued under this section shall not exceed Six Million Dollars ($6,000,000.00). No bonds authorized under this section shall be issued after July 1, 2013.

"(b) The proceeds of bonds issued pursuant to this section shall be deposited into the 2010 City of Jackson Water and Sewer Systems Loan Fund created pursuant to subsection (2) of this section. Any investment earnings on bonds issued pursuant to this section shall be used to pay debt service on bonds issued under this section, in accordance with the proceedings authorizing issuance of such bonds.

"(5) The principal of and interest on the bonds authorized under this section shall be payable in the manner provided in this subsection. Such bonds shall bear such date or dates, be in such denomination or denominations, bear interest at such rate or rates (not to exceed the limits set forth in Section 75-17-101, Mississippi Code of 1972), be payable at such place or places within or without the State of Mississippi, shall mature absolutely at such time or times not to exceed twenty-five (25) years from date of issue, be redeemable before maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as shall be determined by resolution of the commission.

"(6) The bonds authorized by this section shall be signed by the chairman of the commission, or by his facsimile signature, and the official seal of the commission shall be affixed thereto, attested by the secretary of the commission. The interest coupons, if any, to be attached to such bonds may be executed by the facsimile signatures of such officers. Whenever any such bonds shall have been signed by the officials designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers before the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until their delivery to the purchaser, or had been in office on the date such bonds may bear. However, notwithstanding anything herein to the contrary, such bonds may be issued as provided in the Registered Bond Act of the State of Mississippi.

"(7) All bonds and interest coupons issued under the provisions of this section have all the qualities and incidents of negotiable instruments under the provisions of the Uniform Commercial Code, and in exercising the powers granted by this section, the commission shall not be required to and need not comply with the provisions of the Uniform Commercial Code.

"(8) The commission shall act as issuing agent for the bonds authorized under this section, prescribe the form of the bonds, determine the appropriate method for sale of the bonds, advertise for and accept bids or negotiate the sale of the bonds, issue and sell the bonds so authorized to be sold, pay all fees and costs incurred in such issuance and sale, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The commission is authorized and empowered to pay the costs that are incident to the sale, issuance and delivery of the bonds authorized under this section from the proceeds derived from the sale of such bonds. The commission may sell such bonds on sealed bids at public sale or may negotiate the sale of the bonds for such price as it may determine to be for the best interest of the State of Mississippi. All interest accruing on such bonds so issued shall be payable semiannually or annually.

"If such bonds are sold by sealed bids at public sale, notice of the sale shall be published at least one time, not less than ten (10) days before the date of sale, and shall be so published in one or more newspapers published or having a general circulation in the City of Jackson, Mississippi, selected by the commission.

"The commission, when issuing any bonds under the authority of this section, may provide that bonds, at the option of the State of Mississippi, may be called in for payment and redemption at the call price named therein and accrued interest on such date or dates named therein.

"(9) The bonds issued under the provisions of this section are general obligations of the State of Mississippi, and for the payment thereof the full faith and credit of the State of Mississippi is irrevocably pledged. If the funds appropriated by the Legislature are insufficient to pay the principal of and the interest on such bonds as they become due, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated. All such bonds shall contain recitals on their faces substantially covering the provisions of this subsection.

"(10) Upon the issuance and sale of bonds under the provisions of this section, the commission shall transfer the proceeds of any such sale or sales to the 2010 City of Jackson Water and Sewer Systems Loan Fund created in subsection (2) of this section. The proceeds of such bonds shall be disbursed solely upon the order of the Mississippi Development Authority under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds.

"(11) The bonds authorized under this section may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions and things which are specified or required by this section. Any resolution providing for the issuance of bonds under the provisions of this section shall become effective immediately upon its adoption by the commission, and any such resolution may be adopted at any regular or special meeting of the commission by a majority of its members.

"(12) The bonds authorized under the authority of this section may be validated in the Chancery Court of the First Judicial District of Hinds County, Mississippi, in the manner and with the force and effect provided by Chapter 13, Title 31, Mississippi Code of 1972, for the validation of county, municipal, school district and other bonds. The notice to taxpayers required by such statutes shall be published in a newspaper published or having a general circulation in the City of Jackson, Mississippi.

"(13) Any holder of bonds issued under the provisions of this section or of any of the interest coupons pertaining thereto may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights granted under this section, or under such resolution, and may enforce and compel performance of all duties required by this section to be performed, in order to provide for the payment of bonds and interest thereon.

"(14) All bonds issued under the provisions of this section shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi, and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

"(15) Bonds issued under the provisions of this section and income therefrom shall be exempt from all taxation in the State of Mississippi.

"(16) The proceeds of the bonds issued under this section shall be used solely for the purposes therein provided, including the costs incident to the issuance and sale of such bonds.

"(17) The State Treasurer is authorized, without further process of law, to certify to the Department of Finance and Administration the necessity for warrants, and the Department of Finance and Administration is authorized and directed to issue such warrants, in such amounts as may be necessary to pay when due the principal of, premium, if any, and interest on, or the accreted value of, all bonds issued under this section; and the State Treasurer shall forward the necessary amount to the designated place or places of payment of such bonds in ample time to discharge such bonds, or the interest thereon, on the due dates thereof.

"(18) This section shall be deemed to be full and complete authority for the exercise of the powers therein granted, but this section shall not be deemed to repeal or to be in derogation of any existing law of this state."

Subsection (e), which authorized the Department of Finance and Administration to approve or disapprove any lease or rental agreement for up to two thousand (2,000) square feet of space in the Robert G. Clark, Jr. Building with a private entity providing healthcare and wellness services to state employees, was repealed by its own terms effective July 1, 2016.

Cross References — Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Public Procurement Review Board, see § 27-104-7.

Duties of the Department of Finance and Administration with respect to the leasing or renting of certain state-owned lands in Jackson, see §§ 29-1-201, 29-1-203.

Regulation of parking, see § 29-5-57.

Mayfair Building being renamed the Ike Sanford Veterans Affairs Building, see § 29-5-97.

State Executive Building being renamed Heber Ladner Building, see § 29-5-99.

301 Lamar Street Building being renamed the Robert G. Clark, Jr. Building, see § 29-5-101.

New Justice Building being renamed the Carroll Gartin Justice Building, see § 29-5-103.

Powers and duties of the public procurement review board, see § 27-104-7.

OPINIONS OF THE ATTORNEY GENERAL

Department of Finance and Administration has authority, by implication, to contract with vendors for installation of automated teller machines in state buildings within Capitol Complex and to charge appropriate fair market rent as determined by Department. Ranck, Dec. 17, 1992, A.G. Op. #92-0920.

The Department of Finance and Administration has no authority to relocate existing private tenants to other state owned property, which would amount to leasing state owned property to a private entity, absent legislative authority to do so. Stringer, Nov. 17, 2006, A.G. Op. 06-0580.

§ 29-5-3. Use of rooms and apartments of New Capitol.

The several rooms and apartments of the New Capitol shall not be occupied by any other persons nor for any other purpose than as expressly authorized by the legislature; provided, however, that it shall be the duty of the legislature to provide office space in the New Capitol for any state department, officer or employee where it is provided by law that such department, officer or employee shall have an office in the state capitol.

HISTORY: Codes, 1880, § 278; 1892, § 4107; 1906, §§ 4657, 4659; Hemingway's 1917, §§ 3930, 7495; 1930, §§ 4008, 4009; 1942, §§ 8951, 8952; Laws, 1904, ch. 109; Laws, 1932, ch. 125; Laws, 1962, ch. 506, § 1 and ch. 588, § 20; Laws, 1964, ch. 571, §§ 1-6; Laws, 1964 1st Sess ch. 21; Laws, 1966, ch. 544, § 1; Laws, 1970, ch. 553, § 1; Laws, 1972, ch. 326, § 1; Laws, 1983, ch. 402, § 2; Laws, 1984, ch. 488, § 9, eff from and after July 1, 1984.

Cross References — Duty of Bureau of Capitol Facilities to provide Executive Director of The Department of Finance and Administration with sufficient office and storage space, see § 7-7-53.

§ 29-5-5. Repealed.

Repealed by Laws, 1980, ch. 560, § 32, eff from and after May 26, 1980.

§ 29-5-5. [Codes, 1906, § 4657; Hemingway's 1917, § 3930; 1930, § 4009; 1942, § 8952; Laws, 1904, ch. 109; Laws, 1932, ch. 125; Laws, 1962, ch. 506, § 1; Laws, 1962, ch. 588, § 20; Laws, 1964, ch. 571, §§ 1-6; Laws, 1964, 1st Sess, ch. 21; Laws, 1966, ch. 544, § 1; Laws, 1970, ch. 553, § 1]

Editor's Notes — Former § 29-5-5 authorized payment of expenses of the members of the former capitol commission.

§ 29-5-6. Commission expenses.

All monies expended by the Bureau of Capitol Facilities shall be drawn out of the State Treasury only upon the warrant of the Department of Finance and Administration, which shall issue the same only where a specific itemized account shall have been rendered it, which account shall be approved in writing by the Director of the Bureau of Capitol Facilities.

Any department, agency or political subdivision of the government of the state, or any organization occupying offices in any of the office buildings under the jurisdiction or control of the Office of General Services shall pay as directed by the office into the fund created in Section 27-104-107(7), a rent to be fixed by the office which shall conform to prevailing commercial rents in the general area. The Veterans Affairs Board shall pay rent for veterans organizations and veterans auxiliary organizations presently using space in the property described, set apart, and exclusively dedicated as a perpetual memorial to the veterans of World War I, 1914-1918, by Chapter 297, Laws of 1934, if it becomes necessary for such rent to be paid.

In the event that the sums are not paid as directed by the Office of General Services, the director of the office may issue a requisition for a warrant to draw the amount as may be due, plus a penalty of ten percent (10%) of the amount, from any fund appropriated for the use of the agency which has failed to pay rental as agreed.

HISTORY: Codes, 1942, §§ 8952-03, 8952-04, 8952-05; Laws, 1972, ch. 326, §§ 4-6; Laws, 1973, ch. 476, § 1; Laws, 1980, ch. 560, § 10; Laws, 1984, ch. 488, § 10; Laws, 1993, ch. 311, § 3, eff from and after passage (approved March 4, 1993).

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

§ 29-5-7. Repealed.

Repealed by Laws, 1984, ch. 488, § 24, eff from and after July 1, 1984.

§ 29-5-7. [Codes, 1906, § 4658; Hemingway's 1917, § 3931; 1930, § 4010; 1942, § 8953; Laws, 1904, ch. 109]

Editor's Notes — Former § 29-5-7 provided for the employment of a superintendent to supervise the capitol buildings and grounds.

§ 29-5-9. Employment of receptionist and elevator operator.

(1) The director shall have the power and is hereby authorized to employ an elevator operator for the New Capitol Building.

(2) The Senate Management Committee and the House Management Committee (or any successors having responsibility for the hiring of legislative employees), acting jointly, shall have the power, and are hereby authorized, to employ and compensate a receptionist for the New Capitol Building and any assistants deemed necessary for such receptionist. Compensation for the receptionist and any assistants shall be paid out of funds appropriated for joint legislative operations.

It shall be the duty of such receptionist to operate an information desk, furnish information to visitors; maintain a registration book for visitors; distribute literature furnished by state agencies, historical societies, pilgrimage clubs, private individuals or organizations engaged in the manufacturing of products from Mississippi resources; and conduct tours of the building. All agencies of the State of Mississippi and others having literature for distribution shall supply the New Capitol Building receptionist with copies of such literature for distribution.

HISTORY: Codes, 1942, § 8953.5; Laws, 1948, ch. 217, §§ 1-3; Laws, 1950, ch. 206 (¶ 1); Laws, 1952, ch. 333; Laws, 1960, ch. 339; Laws, 1966, ch. 445, § 3; Laws, 1966, ch. 545; Laws, 1984, ch. 488, § 11; Laws, 1997, ch. 358 § 1, eff from and after July 1, 1997.

§ 29-5-11. Hours capitol open.

The Secretary of State shall have charge of the keys and other fastenings of all the exterior doors of the capitol and of all such rooms as are not occupied by one of the courts or as public offices authorized by law; and he shall keep in good order and securely locked, all rooms not actually occupied by the officers to whom they have been appropriated. He shall open the exterior doors at seven o'clock in the morning and keep the same open until the hours of six o'clock in the evening Monday through Friday; provided however, that the capitol shall be kept open when the legislature is in session until a reasonable hour after both houses have concluded the day's business. The capitol shall likewise be kept open so as not to interfere with the sessions of the Supreme Court.

HISTORY: Codes, 1880, § 271; 1892, § 4102; 1906, § 4654; Hemingway's 1917, § 7492; 1930, § 4005; 1942, § 8948; Laws, 1964, ch. 542, § 7, eff from and after 10 days after passage (approved June 11, 1964).

§ 29-5-12. Landscaping and care of New Capitol grounds.

The state building commission is authorized and directed to provide for reasonable landscaping and care, including the installation of a water sprinkling system, for the New Capitol grounds.

HISTORY: Codes, 1942, § 8952-07; Laws, 1972, ch. 326, § 8, eff thirty (30) days from and after passage (Enacted April 5, 1972, without approval of Governor).

Editor's Notes — Section 31-11-1 provides that the term "state building commission" or "building commission" wherever it appears in the laws of Mississippi shall be construed to mean the governor's office of general services. Subsequently, Section 7-1-451 provided that wherever the term "Office of General Services" appeared in any law the same shall mean the Department of Finance and Administration.

§ 29-5-13. Curator of the New Capitol Building; powers and duties of curator; transfer of position of Curator of the New Capitol Building from jurisdiction of Department of Archives and History to the House Management Committee and the Senate Rules Committee.

(1) There is established the position of Curator of the New Capitol Building, who shall have the following powers and duties:

(a) To oversee, initiate, approve and monitor the care of the New Capitol Building and grounds to ensure long-term preservation, conservation and maintenance of the building, historic furnishings and grounds;

(b) To coordinate with personnel of the Department of Finance and Administration and the project professionals on any repair, renovation or restoration plans for the New Capitol Building or grounds, ensuring that all work is in accordance with the Secretary of the Interior's Standards for Rehabilitation;

(c) To request quotations for projects at the New Capitol Building or grounds upon instructions from the Department of Finance and Administration and from the House Management committee and the Senate Rules Committee acting jointly; apply for permits from the Department of Archives and History when applicable; request that projects be initiated through the proper agency and serve as the in-house professional depending upon the scope of work; maintain contact with any project professional involved in a project, beginning with the bid or quote process through initiation and completion of the project; and notify the House, the Senate, joint legislative operations or the Department of Finance and Administration, as appropriate, when the project is complete and ready for final payment;

(d) To coordinate special state events and approved private events held at the New Capitol Building or grounds other than those held in the Chambers of the House of Representatives or the Senate;

(e) To serve as a liaison to the Clerk of the House of Representatives, Secretary of the Senate, Department of Finance and Administration, Department of Archives and History and project professionals on all projects at the New Capitol Building or grounds;

(f) To supervise visitor services personnel in providing tours and events for the public and members of the Legislature that are held at the New Capitol Building or grounds; and

(g) To perform such other duties relating to the New Capitol Building or grounds as jointly prescribed by the House Management Committee and the Senate Rules Committee.

(2) The Curator of the New Capitol Building shall be employed by and under the joint jurisdiction of the House Management Committee and the Senate Rules Committee, and the expenses of the curator shall be paid from the funds appropriated by the Legislature for the joint legislative operations of the House and the Senate. The curator shall provide quarterly reports to the House Management committee and the Senate Rules Committee on the activities and expenses of the curator during the preceding quarter.

(3) The Curator of the New Capitol Building who is employed by the Board of Trustees of the Department of Archives and History under the provisions of Section 39-5-6 on July 1, 2019, shall be transferred from the jurisdiction of the department to the joint jurisdiction of the House Management Committee and the Senate Rules Committee.

HISTORY: Laws, 2019, ch. 335, § 1, eff from and after July 1, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by adding the subsection (1) designation to the first paragraph. The section was enacted by Section 1 of Chapter 335, Laws of 2019, with subsections designated (2) and (3) but no subsection designated (1). The Joint Committee ratified the correction at its August 15, 2017, meeting.

§§ 29-5-15 through 29-5-55. Repealed.

Repealed by Laws, 1972, ch. 326, § 32, eff 30 days after passage (Enacted April 5, 1972, without approval of Governor).

§ 29-5-15. [Codes, 1942, § 8953.4-05; Laws, 1964, ch. 551, § 5]

§ 29-5-17. [Codes, 1942, §§ 8953.4, 8953.4-03; Laws, 1958, ch. 604; Laws, 1964, ch. 551, § 3]

§ 29-5-19. [Codes, 1942, §§ 8953.4-06, 8953.4-12; Laws, ch. 551, §§ 6, 12]

§ 29-5-21. [Codes, 1942, § 8953.4-07; Laws, 1964, ch. 551, § 7]

§ 29-5-23. [Codes, 1942, §§ 8953.3, 8953.4-02, 8953.4-12; Laws, 1955, Ex Sess ch. 124, §§ 1-3; Laws, 1964, ch. 551, §§ 2, 12]

§ 29-5-25. [Codes, 1942, §§ 8953.4-09, 8953.4-13; Laws, 1964, ch. 551, §§ 9, 13]

§ 29-5-27. [Codes, 1942, §§ 8953.4-07, 8953.4-08; Laws, 1964, ch. 551, §§ 7, 8]

§ 29-5-29. [Codes, 1942, §§ 8953.4, 8953.4-04, 8953.4-10; Laws, 1958, ch. 604; Laws, 1964, ch. 551, §§ 4, 10]

§ 29-5-31. [Codes, 1942, §§ 8953.3, 8953.4, 8953.4-11, 8953.4-14; Laws, 1955, Ex Sess ch. 124, §§ 1-3; 1958, ch. 604; Laws, 1964, ch. 551, §§ 11, 14]

§ 29-5-33. [Codes, 1942, §§ 8953.7-01, 8953.7-10; Laws, 1965, Ex Sess ch. 7, §§ 1, 10]

§ 29-5-35. [Codes, 1942, §§ 8953.7-02, 8953.7-21, 8953.7-41; Laws, 1965, Ex Sess, ch. 7, § 2; Laws, 1965, Ex Sess, ch. 8, § 1; Laws, 1965, Ex Sess, ch. 9, § 1]

§ 29-5-37. [Codes, 1942, §§ 8953.7-03, 8953.7-04, 8953.7-22, 8953.7-42; Laws, 1965, Ex Sess, ch. 7, §§ 3, 4; Laws, 1965, Ex Sess, ch. 8, § 2; Laws, 1965, Ex Sess, ch. 9, § 2]

§ 29-5-39. [Codes, 1942, §§ 8953.7-05, 8953.7-23, 8953.7-43; Laws, 1965, Ex Sess, ch. 7, § 5; Laws, 1965, Ex Sess, ch. 8, § 3; Laws, 1965, Ex Sess, ch. 9, § 3]

§ 29-5-41. [Codes, 1942, §§ 8953.7-06, 8953.7-24, 8953.7-44; Laws, 1965, Ex Sess, ch. 7, § 6; Laws, 1965, Ex Sess, ch. 8, § 4; Laws, 1965, Ex Sess, ch. 9, § 4]

§ 29-5-43. [Codes, 1942, §§ 8953.7-07, 8953.7-25, 8953.7-45; Laws, 1965, Ex Sess, ch. 7, § 7; Laws, 1965, Ex Sess, ch. 8, § 5; Laws, 1965, Ex Sess, ch. 9, § 5]

§ 29-5-45. [Codes, 1942, §§ 8953.7-08, 8953.7-26, 8953.7-46; Laws, 1965, Ex Sess, ch. 7, § 8; Laws, 1965, Ex Sess, ch. 8, § 6; Laws, 1965, Ex Sess, ch. 9, § 6]

§ 29-5-47. [Codes, 1942, §§ 8953.7-09, 8953.7-27, 8953.7-47; Laws, 1965, Ex Sess, ch. 7, § 9; Laws, 1965, Ex Sess, ch. 8, § 7; Laws, 1965, Ex Sess, ch. 9, § 7]

§ 29-5-49. [Codes, 1942, §§ 8953.7-11, 8953.7-12, 8953.7-28, 8953.7-48; Laws, 1965, Ex Sess, ch. 7, §§ 11, 12; Laws, 1965, Ex Sess, ch. 8, § 8; Laws, 1965, Ex Sess, ch. 9, § 8]

§ 29-5-51. [Codes, 1942, §§ 8953.7-13, 8953.7-50; Laws, 1965, Ex Sess, ch. 7, § 13; Laws, 1965, Ex Sess, ch. 9, § 10]

§ 29-5-53. [Codes, 1942, §§ 8953.7-29, 8953.7-49; Laws, 1965, Ex Sess, ch. 8, § 9; Laws, 1965, Ex Sess, ch. 9, § 9]

§ 29-5-55. [Codes, 1942, §§ 8953.7-14, 8953.7-30, 8953.7-51; Laws, 1965, Ex Sess, ch. 7, § 14; Laws, 1965, Ex Sess, ch. 8, § 10; Laws, 1965, Ex Sess, ch. 9, § 11]

Editor's Notes — Former § 29-5-13 contained provisions regulating parking. Language substantially corresponding to that of former § 29-5-13 may now be found at § 29-5-57.

Former § 29-5-15 provided for reserved parking for the Governor. Language substantially corresponding to that of former § 29-5-15 may now be found at § 29-5-59.

Former § 29-5-17 regulated parking adjacent to the north side of the New Capitol Building. Language substantially corresponding to that of former § 29-5-17 may now be found at § 29-5-61.

Former § 29-5-19 regulated parking for state officers, employees, and the press. Language substantially corresponding to that of former § 29-5-19 may now be found at § 29-5-63.

Former § 29-5-21 regulated parking by members of the legislature. Language substantially corresponding to that of former § 29-5-21 may now be found at § 29-5-65.

Former § 29-5-23 provided for parking insignia for automobiles. Language substantially corresponding to that of former § 29-5-23 may now be found at § 29-5-67.

Former § 29-5-25 authorized the posting of signs to indicate reserved parking spaces. Language substantially corresponding to that of former § 29-5-25 may now be found at § 29-5-71.

Former § 29-5-27 contained provisions for restricted parking. Language substantially corresponding to that of former § 29-5-27 may now be found at § 29-5-73.

Former § 29-5-29 provided for penalties for illegal parking. Language substantially corresponding to that of former § 29-5-29 may now be found at § 29-5-75.

Former § 29-5-31 contained provisions relating to jurisdiction to enforce laws on the New Capitol grounds. Language similar to that of former § 29-5-31 may now be found at § 29-5-77.

Former § 29-5-33 authorized the promulgation of regulations for protection of the State Capitol building. Language substantially corresponding to that of former § 29-5-33 may now be found at § 29-5-79.

Former § 29-5-35, derived from Code 1942, §§ 8953.7-02, 8953.7-21, and 8953.7-41, was repealed directly by Laws of 1972, ch. 326, § 32, which repealed Code 1942, §§ 8953.7-02 and 8953.7-41, and impliedly by Laws of 1972, ch. 326, § 7, which appears to supersede Code 1942, § 8953.7-21 insofar as the State Executive Mansion is concerned. See now § 29-5-81.

Former § 29-5-37 contained restrictions on travel and occupancy of State Capitol grounds. Language substantially similar to that of former § 29-5-37 may now be found at § 29-5-83.

Former § 29-5-39 prohibited sales, signs, placards, and solicitations on the State Capitol grounds. Language substantially similar to that of former § 29-5-39 may now be found at § 29-5-85.

Former § 29-5-41 prohibited the damaging of structures or vegetation on the State Capitol grounds. Language substantially similar to that of former § 29-5-41 may now be found at § 29-5-87.

Former § 29-5-43 prohibited the discharge of firearms or explosives, setting fires, uttering threatening or abusive language, on the grounds of the State Capitol. Language substantially similar to that of former § 29-5-43 may now be found at § 29-5-89.

Former § 29-5-45 regulated parades or assemblages, and the display of banners. Language substantially similar to that of former § 29-5-45 may now be found at § 29-5-91.

Former § 29-5-47 provided penalties for violating former §§ 29-5-83 through 29-5-91. Language substantially similar to that of former § 29-5-47 may now be found at § 29-5-93.

Former § 26-5-49 permitted suspension of prohibitions on proper occasions. Language similar to that of former § 29-5-49 may now be found at § 29-5-95.

Former § 29-5-51 provided that provisions of former §§ 29-5-35 to 29-5-45 were inapplicable to the interior of the capitol building.

Former § 29-5-53 provided for the arrest of violators. For present provisions providing for penalties for violations, see §§ 29-5-75 and 29-5-93.

Former § 29-5-55 provided that former laws were to remain in force.

§ 29-5-57. Regulation of parking.

It shall be the duty of the Office of General Services to supervise and regulate the parking of motor vehicles at the facilities named in Section 29-5-2 except for the state board of health building and the governor's mansion, and to make all necessary regulations therefor to the end that parking space shall be available for state officers and employees whose official duties require their presence therein, and for business visitors, authorized members of the press, tourists and other visitors who are in need of parking space at any such building, subject, however, to the special provisions of Section 29-5-65 which apply when the legislature is in session.

HISTORY: Codes, 1942, § 8952-08; Laws, 1972, ch. 326, § 9; Laws, 1984, ch. 488, § 12, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Suitable insignia for automobiles parking at the New Capitol Building, generally, see § 29-5-67.

Signs or markers indicating reserved parking spaces, see, generally, § 29-5-71.

Penalty for illegal parking, see § 29-5-75.

Jurisdiction to enforce provisions of this section, see § 29-5-77.

§ 29-5-59. Parking for Governor.

A suitable parking space or spaces adjacent to the south side of the New Capitol Building between the south entrance to the first floor and the east walkway, or President Street entrance, shall be reserved for use of the Governor.

HISTORY: Codes, 1942, § 8952-10; Laws, 1972, ch. 326, § 11, eff 30 days after passage (Enacted April 5, 1972, without approval of Governor).

Cross References — Suitable insignia for automobiles parking at the New Capitol Building, generally, see § 29-5-67.

Signs or markers indicating reserved parking spaces, see, generally, § 29-5-71.

Penalty for illegal parking, see § 29-5-75.

Jurisdiction to enforce provisions of this section, see § 29-5-77.

§ 29-5-61. Parking adjacent to north side of New Capitol Building.

The Office of General Services is authorized and directed to have designated not less than twenty (20) parking spaces adjacent to the north side of the New Capitol Building for the use of tourists, visitors and those having temporary business to transact in the New Capitol. All parking spaces adjacent to the north side of the New Capitol Building shall be and are hereby reserved for use by the lieutenant governor, the speaker of the house of representatives, the president pro tempore of the senate, officers of the senate and house of representatives, and visitors, tourists and those persons having temporary business to transact in the New Capitol Building. The said parking spaces shall be plainly marked with suitable signs or markers, designating which space is reserved for such individual or officer. The spaces reserved for use in parking for visitors, tourists and those having temporary business to transact in said New Capitol Building shall be plainly marked with suitable signs or markers showing that they are reserved for visitors and with the notation thereon "two-hour limit." The Office of General Services shall provide suitable signs and markers to indicate those parking spaces which shall be available for the convenience of tourists, visitors, and those having temporary business to transact in the New Capitol.

HISTORY: Codes, 1942, §§ 8952-07, 8952-09; Laws, 1972, ch. 326, §§ 8, 10; Laws, 1984, ch. 488, § 13, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General

Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Suitable insignia for automobiles parking at the New Capitol Building, generally, see § 29-5-67.

Signs or markers indicating reserved parking spaces, see, generally, § 29-5-71.

Parking restrictions, see § 29-5-73.

Penalty for illegal parking, see § 29-5-75.

Jurisdiction to enforce provisions of this section see § 29-5-77.

§ 29-5-63. Parking for state officers, employees, and press.

All parking spaces on the north side of the New Capitol Building, other than those adjacent to the north side of said building, between the north, or High Street entrance, and the east walkway, or President Street entrance, shall be and are hereby reserved for use of state officers, state employees and authorized members of the press whose official duties require their presence in the New Capitol Building.

Parking spaces not otherwise specifically designated may be made available to other state officers and employees not domiciled in the New Capitol Building, in the discretion of the Office of General Services and under such regulations as may be prescribed therefor.

HISTORY: Codes, 1942, §§ 8952-11, 8952-12; Laws, 1972, ch. 326, §§ 12, 13; Laws, 1984, ch. 488, § 14, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Suitable insignia for automobiles parking at the New Capitol Building, generally, see § 29-5-67.

Signs or markers indicating reserved parking spaces, see, generally, § 29-5-71.

Parking restrictions, see § 29-5-73.

Penalty for illegal parking, see § 29-5-75.

Jurisdiction to enforce provisions of this section see § 29-5-77.

§ 29-5-65. Parking for members of Legislature.

At any time when the Legislature is in session, the Office of General Services shall designate and reserve sufficient parking spaces around the New Capitol Building to accommodate the members of the Legislature, and, when such spaces have been so designated and reserved, they shall be identified and marked by means of numbers, one (1) of which shall be assigned to each member of the Legislature, and that space for which he or she holds that number shall be reserved for the exclusive use of the said legislator. The Office of General Services is authorized and directed to reserve and allocate, among those spaces, an individual parking space for use of any member of the Legislature who is physically handicapped, so as to make his or her entrance to and exit from the New Capitol Building as convenient as is reasonably possible.

HISTORY: Codes, 1942, § 8952-13; Laws, 1972, ch. 326, § 14; Laws, 1984, ch. 488, § 15, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Regulation of parking, generally, see § 29-5-57.

Suitable insignia for automobiles parking at the New Capitol Building, generally, see § 29-5-67.

Signs or markers indicating reserved parking spaces, see, generally, § 29-5-71.

Penalty for illegal parking, see § 29-5-75.

Jurisdiction to enforce provisions of this section, see § 29-5-77.

§ 29-5-67. Insignia for automobiles.

The Office of General Services is directed to have prepared or to secure suitable insignia for placing on automobiles so as to properly designate said automobiles as belonging to or used by state officers and employees and denoting thereon whether such officer or employee is located in the New Capitol Building or such other identification as will aid in the enforcement of Sections 29-5-57 through 29-5-67 and section 29-5-77. Such insignia or other identification shall be issued once each year to all state officers or state employees entitled thereto.

Members of the state legislature shall be furnished with distinctive insignia of appropriate design for their personal automobiles, the expense to be paid out of the contingent fund of each house.

HISTORY: Codes, 1942, § 8952-14; Laws, 1972, ch. 326, § 15; Laws, 1984, ch. 488, § 16, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Signs or markers indicating reserved parking spaces, see, generally, § 29-5-71.

Penalty for illegal parking, see § 29-5-75.

Jurisdiction to enforce provisions of this section see § 29-5-77.

§ 29-5-69. Parking for capitol employees during legislative sessions.

During the period each year when the legislature is in session, all parking spaces adjacent to the capitol grounds on the west side of President Street and on both sides of High Street shall be reserved for the use of capitol employees. The office of general services is instructed to place signs to that effect on said streets during legislative sessions.

All employees in the capitol who own automobiles shall be provided with distinctive stickers. Each such employee shall place the sticker in a prominent place on the rear of the automobile owned and regularly used by such employee.

Any person without a sticker on his automobile who parks in any space reserved in the first paragraph of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed Twenty-five Dollars ($25.00).

Any person who is not a capitol employee who has on his automobile a capitol parking sticker or any capitol employee who gives his parking sticker to a non-capitol employee to use on such person's car, shall be guilty of a misdemeanor and shall, upon conviction, be fined One Hundred Dollars ($100.00).

The capitol police employed by the office of general services shall have the authority and are directed to enforce the provisions of this section.

HISTORY: Codes, 1942, § 8953.45; Laws, 1972, ch. 434, §§ 1, 2, 3, 4; Laws, 1984, ch. 488, § 17, eff from and after July 1, 1984.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of the first paragraph. The words "effect on said street" were changed to "effect on said streets." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Penalty for illegal parking, see § 29-5-75.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 29-5-71. Signs to indicate reserved parking spaces.

The Office of General Services is hereby directed to erect suitable signs or markers to indicate the parking spaces reserved, in conformity with Sections 29-5-57 through 29-5-67 and Sections 29-5-71 through 29-5-77.

The state highway department is hereby directed to cooperate with the Office of General Services in the painting or marking of such parking spaces as are prescribed by the Office of General Services.

HISTORY: Codes, 1942, §§ 8952-15, 8952-16; Laws, 1972, ch. 326, §§ 16, 17; Laws, 1984, ch. 488, § 18, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Suitable insignia for automobiles parking at the New Capitol Building, generally, see § 29-5-67.

Signs or markers indicating reserved parking spaces, see, generally, § 29-5-71.

Penalty for illegal parking, see § 29-5-75.

Jurisdiction to enforce provisions of this section see § 29-5-77.

§ 29-5-73. Parking restrictions.

The driveway on the north side of the New Capitol Building leading from High Street to the north entrance to said building shall not be used for parking.

When the legislature is not in session, no person other than elected state officials and state employees whose official duties require their presence in the New Capitol Building, visitors, tourists, members of the press and those having temporary business to transact in the New Capitol Building, as referred to in Section 29-5-61, shall have the right to park on the New Capitol Building grounds, except as provided in Section 29-5-63.

HISTORY: Codes, 1942, §§ 8952-13, 8952-17; Laws, 1972, ch. 326, §§ 14, 18, eff 30 days after passage (Enacted April 5, 1972, without approval of Governor).

Cross References — Suitable insignia for automobiles parking at the New Capitol Building, generally, see § 29-5-67.

Signs or markers indicating reserved parking spaces, see, generally, § 29-5-71.

Penalty for illegal parking, see § 29-5-75.

Jurisdiction to enforce provisions of this section see § 29-5-77.

§ 29-5-75. Penalty for illegal parking.

Any person, other than an out-of-state tourist, who shall knowingly allow his automobile or vehicle to remain parked for a longer period than two (2) hours in any of the parking spaces adjacent to the north side of the New Capitol which are reserved for tourists, visitors, and persons having temporary business therein, and any person parking, or causing to be parked, his or any motor vehicle or other conveyance in or on the grounds of the facilities named in Section 29-5-2 in other violation of Sections 29-5-57 through 29-5-67 and Sections 29-5-71 through 29-5-77, shall be guilty of a misdemeanor and, upon conviction therefor, shall be fined not exceeding ten dollars ($10.00) for each offense.

HISTORY: Codes, 1942, §§ 8952-25, 8952-26; Laws, 1972, ch. 326, §§ 26, 27, eff 30 days after passage (Enacted April 5, 1972, without approval of Governor).

Cross References — Suitable insignia for automobiles parking at the New Capitol Building, generally, see § 29-5-67.

Signs or markers indicating reserved parking spaces, see, generally, § 29-5-71.

Jurisdiction to enforce provisions of this section see § 29-5-77.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 29-5-77. Jurisdiction to enforce laws on state grounds.

(1) The Department of Finance and Administration shall have jurisdiction relative to the enforcement of all laws of the State of Mississippi on the properties, from curb to curb including adjoining streets, sidewalks and leased parking lots within the Capitol complex, set forth in Section 29-5-2, the Court of Appeals Building, the Mississippi Department of Transportation Building and the Public Employees' Retirement System Building, and any property purchased, constructed or otherwise acquired by the State of Mississippi for conducting state business and not specifically under the supervision and care by any other state entity, but which is reasonably assumed the department would be responsible for such, as approved by the Public Procurement Review Board. The Department of Finance and Administration shall, through any person or persons appointed by the Department of Finance and Administra-

tion, or through the Department of Public Safety when requested by the Department of Finance and Administration, make arrests for any violation of any law of the State of Mississippi on those grounds of or within those properties. The Department of Finance and Administration shall enforce the provisions of Sections 29-5-57 through 29-5-67, 29-5-71 through 29-5-77, and 29-5-81 through 29-5-95, and prescribe such rules and regulations as are necessary therefor.

(2) When in the opinion of the Governor or, in his absence, the Lieutenant Governor, it is readily apparent that an emergency exists that the persons appointed by the Department of Finance and Administration are unable to control in the accomplishment of the provisions of Sections 29-5-57 through 29-5-67, 29-5-71 through 29-5-77, and 29-5-81 through 29-5-95 in regard to law enforcement, then the Governor or, in his absence, the Lieutenant Governor, may call upon the Department of Public Safety, members of which shall have power to arrest and detain any persons violating the provisions of those sections of law, until the person can be brought before the proper authorities for trial.

(3) Subject to the approval of the Board of Trustees of State Institutions of Higher Learning, the Board of Trustees and the Department of Finance and Administration shall be authorized to enter into a contract for the Department of Finance and Administration to supply the security personnel with jurisdiction to enforce all laws of the State of Mississippi on the property of the Board of Trustees located at the corner of Ridgewood Road and Lakeland Drive in the City of Jackson.

(4)(a) The Department of Finance and Administration and the Department of Agriculture are authorized to enter into a contract for the Department of Finance and Administration to have jurisdiction and enforce all laws of the State of Mississippi on the property of the Department of Agriculture located at 121 North Jefferson Street and the new Farmer's Market Building located at the corner of High and Jefferson Streets in the City of Jackson, Hinds County, Mississippi. It is the intent of the Legislature that the Department of Finance and Administration will not post any security personnel at such buildings, but will provide regular vehicle patrols and responses to security system alarms.

(b) The Department of Finance and Administration and the Mississippi Fair Commission are authorized to enter into a contract for the Department of Finance and Administration to have jurisdiction and enforce all laws of the State of Mississippi on the property of the Mississippi Fair Commission known as the "Mississippi State Fairgrounds Complex" and any and all of its outlying buildings and property. The Department of Finance and Administration and the Mississippi Fair Commission are authorized to enter into a contract for the Department of Finance and Administration to supply the security personnel to the Mississippi Fair Commission with jurisdiction to enforce all laws of the State of Mississippi on this property and any and all buildings on this property.

(5) The Department of Finance and Administration and the Department of Revenue are authorized to enter into a contract for the Department of

Finance and Administration to supply the security personnel with jurisdiction to enforce all laws of the State of Mississippi at the Alcoholic Beverage Control facility and the Department of Revenue main office.

(6) The Department of Finance and Administration shall have jurisdiction relative to the enforcement of all laws of the State of Mississippi within the boundaries of the Capitol Complex Improvement District created in Section 29-5-203. The Department of Finance and Administration shall, through any person or persons appointed by the Department of Finance and Administration, make arrests for any violation of any law of the State of Mississippi which occurs within the boundaries of the district. The jurisdiction of the Department of Finance and Administration under this subsection (6) shall be concurrent with the jurisdiction of the City of Jackson, Mississippi, and that of Hinds County, Mississippi. The jurisdiction and authority of the Department of Finance and Administration under this subsection (6) shall be in addition to any other jurisdiction and authority provided to the department under this section or any other law.

HISTORY: Codes, 1942, §§ 8952-28, 8952-29; Laws, 1972, ch. 326, §§ 29, 30; Laws, 1984, ch. 488, § 19; Laws, 1996, ch. 398, § 1; Laws, 2004, ch. 367, § 1; Laws, 2005, ch. 504, § 4; Laws, 2006, ch. 364, § 1; Laws, 2008, ch. 430, § 2; Laws, 2008, ch. 466, § 1; Laws, 2013, ch. 357, § 3; Laws, 2017, ch. 444, § 10, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 2 of ch. 430, Laws of 2008, effective upon passage (approved April 3, 2008), amended this section. Section 1 of ch. 466, Laws of 2008, effective upon passage (approved April 14, 2008), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same Code section enacted within the same Legislative session may become effective. The Joint Committee ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2008, meeting of the committee.

Editor's Notes — Laws of 2009, ch. 561, § 6, as amended by Laws of 2011, ch. 507, § 4, effective April 26, 2011, provides:

"SECTION 6. The Department of Finance and Administration shall convey to the Mississippi Transportation Commission all of the right, title and interest in certain real property within the City of Jackson, Hinds County, Mississippi, described more specifically as follows:

"All of that certain block of the City of Jackson bounded by Hamilton Street on the north, Lamar Street on the west, Griffith Street on the south and North West Street on the east all being situated in and a part of Lots 1-7 of the Richard Griffith Subdivision, partially in the 9.40 acre lot Number 3 North and partially in the 10 acre lot Number 4 North of the City of Jackson, in the First Judicial District of Hinds County, Mississippi, all containing 4.30 acres more or less."

Cross References — Insignia for automobiles parking at the New Capitol Building, generally, see § 29-5-67.

Signs or markers indicating reserved parking spaces, see, generally, § 29-5-71.

OPINIONS OF THE ATTORNEY GENERAL

Capitol Police may request assistance from Hinds County Sheriff or Jackson City Police at Capitol Complex. Ranck, Oct. 22, 1992, A.G. Op. #92-0747.

§ 29-5-79. Protection of State Capitol Building.

(1) The speaker of the House of Representatives and the Lieutenant Governor are authorized to make such regulations as they may deem necessary for preserving the peace and securing the State Capitol from defacement, and for the protection of the property therein. The Lieutenant Governor or the speaker of the House of Representatives may request the assistance of the office of general services and the State Department of Public Safety in order to preserve the peace at the State Capitol and secure the State Capitol from defacement, and for the protection of the property therein.

(2) All regulations promulgated under authority of this section shall be filed with the Secretary of State and be made available for public inspection; such regulation shall likewise be published in one (1) of the daily newspapers of the City of Jackson, and shall not become effective until the expiration of ten (10) days after the date of such filing with the Secretary of State and such publication.

HISTORY: Codes, 1942, § 8952-41; Laws, 1972, ch. 458, §§ 1, 2; Laws, 1984, ch. 488, § 20, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Penalty for defacing capitol building, see § 97-7-9.

JUDICIAL DECISIONS

ANALYSIS

1.-3. [Reserved for future use.]
4. Under former § 29-5-33.

1.-3. [Reserved for future use.]

4. Under former § 29-5-33.

A statute which prohibits signs, placards, advertisements, harangues, orations, loud language, parades, processions, assemblages, and partisan flags, banners, or devices on the grounds occupied by the State capitol buildings, office buildings and executive mansion infringe no constitutional limitation. Coppock v. Patterson, 272 F. Supp. 16, 1967 U.S. Dist. LEXIS 7062 (S.D. Miss. 1967).

§ 29-5-81. Description of state grounds.

Grounds of public buildings over which the Department of Finance and Administration has jurisdiction shall comprise the following:

(a) In the City of Jackson, Mississippi:

(i) The grounds surrounding all state buildings identified in Section 29-5-2(a)(i) and all seat of government property;

(ii) State Board of Health Complex: Bounded on the north by Stadium Drive, on the west by the property of Mississippi Hospital and Medical Service, on the south by Woodrow Wilson Avenue, on the southeast by property leased by the Mississippi Federation of Women's Clubs and on the east by North State Street;

(iii) The Barefield Property, the Sun-n-Sand Property and any other property described in Section 1 of Chapter 542, Laws of 2009;

(iv) The Mississippi State Fairgrounds Complex, including, but not limited to, the Mississippi Coliseum, Trademart, Kirk Fordice Equine Center, Mississippi Street Armory, and all arenas, barns, buildings, campgrounds and property whatsoever; such property being bounded on the north by High Street, on the west by Jefferson Street, on the east by Greymont Street, and on the south by Greymont Street.

(b) The grounds of Dr. Eldon Langston Bolton Building: Located in the City of Biloxi, Mississippi.

(c) The grounds of State Service Center: Located at the intersection of U.S. Highway 49 and John Merl Tatum Industrial Drive in the City of Hattiesburg, Mississippi.

(d) Any grounds of any property purchased, constructed or otherwise acquired by the State of Mississippi for conducting state business and not specifically under the supervision and care by any other state entity, but which is reasonably assumed the department would be responsible for such, as approved by the Public Procurement Review Board, including, but not limited to:

1. The grounds of the National Aeronautics and Space Administration (NASA) Shared Services Center and Lockheed Martin Building at Stennis Space Center;
2. The grounds of the Mississippi Sports Hall of Fame;
3. The grounds of the Mississippi Crafts Center;
4. The grounds of the Mississippi Children's Museum; and
5. The grounds of the Mississippi Arts and Entertainment Center.

HISTORY: Codes, 1942, § 8952-06; Laws, 1972, ch. 326, § 7; Laws, 1980, ch. 375, § 3; Laws, 1984, ch. 488, § 21; Laws, 1996, ch. 398, § 2; Laws, 1998, ch. 424, § 2; Laws, 2001, ch. 325, § 2; Laws, 2004, ch. 301, § 4; Laws, 2008, ch. 430, § 3; Laws, 2009, ch. 542, § 3; Laws, 2013, ch. 357, § 4; Laws, 2017, ch. 330, § 2, eff from and after passage (approved Mar. 13, 2017).

Editor's Notes — Laws of 2009, ch. 542, §1 provides for the purchase of certain parcels of real property in the vicinity of the Capitol Complex described as the "Barefield Property," the Sun-n-Sand Property, and the property located at 633 North State Street.

Laws of 2009, ch. 557, § 52 provides:

"SECTION 52. (1) The Department of Finance and Administration is authorized to transfer and convey the state-owned 101 Capitol Centre property located at 101 West Capitol Street, Jackson, Mississippi, to Jackson State University.

"(2) The conveyance authorized in this section may be subject to terms and conditions accepted and agreed upon by the Department of Finance and Administration and Jackson State University. "

Laws of 2009, ch. 561, § 6, as amended by Laws of 2011, ch. 507, § 4, effective April 26, 2011, provides:

"SECTION 6. The Department of Finance and Administration shall convey to the Mississippi Transportation Commission all of the right, title and interest in certain real property within the City of Jackson, Hinds County, Mississippi, described more specifically as follows:

"All of that certain block of the City of Jackson bounded by Hamilton Street on the north, Lamar Street on the west, Griffith Street on the south and North West Street on the east all being situated in and a part of Lots 1-7 of the Richard Griffith Subdivision, partially in the 9.40 acre lot Number 3 North and partially in the 10 acre lot Number 4 North of the City of Jackson, in the First Judicial District of Hinds County, Mississippi, all containing 4.30 acres more or less."

Laws of 2010, ch. 533, § 44, provides:

"SECTION 44. (1)(a) The Mississippi Development Authority (MDA) is authorized to provide one or more interest-free nonrecourse loans to the City of Jackson, Mississippi, to assist the City of Jackson in paying the costs associated with making repairs, upgrades and improvements to portions of the city's water and sewer systems infrastructure located in the areas within and in close proximity to the state grounds and lands described in Sections 29-5-2 and 29-5-81, Mississippi Code of 1972. The aggregate amount of all loans made under this section shall not exceed Six Million Dollars ($6,000,000.00), and the time allowed for repayment of a loan shall not exceed seven (7) years.

"(b) The City of Jackson must submit an application to the MDA. The application must include a description of the purpose for which assistance is requested, the amount of assistance requested and any other information required by the MDA.

"(c) The MDA shall have all powers necessary to implement and administer the loans authorized under this section, and the MDA shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this section.

"(2) There is created in the State Treasury a special fund to be designated as the '2010 City of Jackson Water and Sewer Systems Loan Fund,' which shall consist of the proceeds of general obligation bonds authorized to be issued by this section and funds from any other source designated for deposit into the fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used by the MDA for the purposes described in this section.

"(3) As used in this section, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

"(a) 'Accreted value' of any bonds means, as of any date of computation, an amount equal to the sum of (i) the stated initial value of such bond, plus (ii) the interest accrued thereon from the issue date to the date of computation at the rate, compounded semiannually, that is necessary to produce the approximate yield to maturity shown for bonds of the same maturity.

"(b) 'State' means the State of Mississippi.

"(c) 'Commission' means the State Bond Commission.

"(4) (a) The Mississippi Development Authority, at one time, or from time to time, may declare by resolution the necessity for issuance of general obligation bonds of the State of Mississippi to provide funds for the loans authorized in this section. Upon the adoption of a resolution by the Mississippi Development Authority, declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by this subsection, the Mississippi Development Authority shall deliver a certified copy of its resolution or resolutions to the commission. Upon receipt of such resolution, the commission, in its discretion, may act as the issuing agent, prescribe the form of the bonds, determine the appropriate method for sale of the bonds, advertise for and accept bids or negotiate the sale of the bonds, issue and sell the bonds so authorized to be sold and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The total amount of bonds issued under this section shall not exceed Six Million Dollars ($6,000,000.00). No bonds authorized under this section shall be issued after July 1, 2013.

"(b) The proceeds of bonds issued pursuant to this section shall be deposited into the 2010 City of Jackson Water and Sewer Systems Loan Fund created pursuant to subsection (2) of this section. Any investment earnings on bonds issued pursuant to this section shall be used to pay debt service on bonds issued under this section, in accordance with the proceedings authorizing issuance of such bonds.

"(5) The principal of and interest on the bonds authorized under this section shall be payable in the manner provided in this subsection. Such bonds shall bear such date or dates, be in such denomination or denominations, bear interest at such rate or rates (not to exceed the limits set forth in Section 75-17-101, Mississippi Code of 1972), be payable at such place or places within or without the State of Mississippi, shall mature absolutely at such time or times not to exceed twenty-five (25) years from date of issue, be redeemable before maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as shall be determined by resolution of the commission.

"(6) The bonds authorized by this section shall be signed by the chairman of the commission, or by his facsimile signature, and the official seal of the commission shall be affixed thereto, attested by the secretary of the commission. The interest coupons, if any, to be attached to such bonds may be executed by the facsimile signatures of such officers. Whenever any such bonds shall have been signed by the officials designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers before the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until their delivery to the purchaser, or had been in office on the date such bonds may bear. However, notwithstanding anything herein to the contrary, such bonds may be issued as provided in the Registered Bond Act of the State of Mississippi.

"(7) All bonds and interest coupons issued under the provisions of this section have all the qualities and incidents of negotiable instruments under the provisions of the Uniform Commercial Code, and in exercising the powers granted by this section, the commission shall not be required to and need not comply with the provisions of the Uniform Commercial Code.

"(8) The commission shall act as issuing agent for the bonds authorized under this section, prescribe the form of the bonds, determine the appropriate method for sale of the bonds, advertise for and accept bids or negotiate the sale of the bonds, issue and sell the bonds so authorized to be sold, pay all fees and costs incurred in such issuance and sale, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The commission is authorized and empowered to pay the costs that are incident to the sale, issuance and delivery of the bonds authorized under this section from the proceeds derived from the sale of such bonds. The commission may sell such bonds on sealed bids at public sale or may negotiate the sale of the bonds for such price as it may determine to be for the best interest of the State of Mississippi. All interest accruing on such bonds so issued shall be payable semiannually or annually.

"If such bonds are sold by sealed bids at public sale, notice of the sale shall be published at least one time, not less than ten (10) days before the date of sale, and shall be so published in one or more newspapers published or having a general circulation in the City of Jackson, Mississippi, selected by the commission.

"The commission, when issuing any bonds under the authority of this section, may provide that bonds, at the option of the State of Mississippi, may be called in for payment and redemption at the call price named therein and accrued interest on such date or dates named therein.

"(9) The bonds issued under the provisions of this section are general obligations of the State of Mississippi, and for the payment thereof the full faith and credit of the State of Mississippi is irrevocably pledged. If the funds appropriated by the Legislature are insufficient to pay the principal of and the interest on such bonds as they become due, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated. All such bonds shall contain recitals on their faces substantially covering the provisions of this subsection.

"(10) Upon the issuance and sale of bonds under the provisions of this section, the commission shall transfer the proceeds of any such sale or sales to the 2010 City of Jackson Water and Sewer Systems Loan Fund created in subsection (2) of this section. The proceeds of such bonds shall be disbursed solely upon the order of the Mississippi Development Authority under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds.

"(11) The bonds authorized under this section may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions and things which are specified or required by this section. Any resolution providing for the issuance of bonds under the provisions of this section shall become effective immediately upon its adoption by the commission, and any such resolution may be adopted at any regular or special meeting of the commission by a majority of its members.

"(12) The bonds authorized under the authority of this section may be validated in the Chancery Court of the First Judicial District of Hinds County, Mississippi, in the manner and with the force and effect provided by Chapter 13, Title 31, Mississippi Code of 1972, for the validation of county, municipal, school district and other bonds. The notice to taxpayers required by such statutes shall be published in a newspaper published or having a general circulation in the City of Jackson, Mississippi.

"(13) Any holder of bonds issued under the provisions of this section or of any of the interest coupons pertaining thereto may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights granted under this section, or under such resolution, and may enforce and compel performance of all duties required by this section to be performed, in order to provide for the payment of bonds and interest thereon.

"(14) All bonds issued under the provisions of this section shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi, and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

"(15) Bonds issued under the provisions of this section and income therefrom shall be exempt from all taxation in the State of Mississippi.

"(16) The proceeds of the bonds issued under this section shall be used solely for the purposes therein provided, including the costs incident to the issuance and sale of such bonds.

"(17) The State Treasurer is authorized, without further process of law, to certify to the Department of Finance and Administration the necessity for warrants, and the Department of Finance and Administration is authorized and directed to issue such warrants, in such amounts as may be necessary to pay when due the principal of, premium, if any, and interest on, or the accreted value of, all bonds issued under this section; and the State Treasurer shall forward the necessary amount to the designated place or places of payment of such bonds in ample time to discharge such bonds, or the interest thereon, on the due dates thereof.

"(18) This section shall be deemed to be full and complete authority for the exercise of the powers therein granted, but this section shall not be deemed to repeal or to be in derogation of any existing law of this state."

Cross References — Powers and duties of the public procurement review board, see § 27-104-7.

Jurisdiction to enforce provisions of this section see § 29-5-77.

JUDICIAL DECISIONS

ANALYSIS

1.-3. [Reserved for future use.]
4. Under former § 29-5-35.

1.-3. [Reserved for future use.]

4. Under former § 29-5-35.
A statute which prohibits signs, placards, advertisements, harangues, orations, loud language, parades, processions, assemblages, and partisan flags, banners, or devices on the grounds occupied by the State capitol buildings, office buildings and executive mansion infringe no constitutional limitation. Coppock v. Patterson, 272 F. Supp. 16, 1967 U.S. Dist. LEXIS 7062 (S.D. Miss. 1967).

§ 29-5-83. Restrictions on travel and occupancy of grounds.

Public travel in and occupancy of the grounds under the authority of the Office of General Services described in Section 29-5-81 shall be restricted to the roads, walks and places prepared for that purpose by paving or otherwise. It is forbidden to occupy the roads, walks or places in such grounds in such manner as to obstruct or hinder their proper use.

HISTORY: Codes, 1942, §§ 8952-18, 8952-19; Laws, 1972, ch. 326, §§ 19, 20; Laws, 1984, ch. 488, § 22, eff from and after July 1, 1984.

Editor's Notes — Section § 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Jurisdiction to enforce provisions of this section see § 29-5-77.

Penalties for violation of this section, see § 29-5-93.

Suspension of certain prohibitions on proper occasions, see § 29-5-95.

§ 29-5-85. Prohibition of sales, signs, placards, and solicitations.

It is forbidden to offer or expose any article for sale in or on such grounds; to display any sign, placard, or other form of advertisement therein; or to solicit fares, alms, subscriptions, or contributions therein.

HISTORY: Codes, 1942, § 8952-20; Laws, 1972, ch. 326, § 21, eff 30 days after passage (Enacted April 5, 1972, without approval of Governor).

Cross References — Jurisdiction to enforce provisions of this section see § 29-5-77.

Penalties for violation of this section, see § 29-5-93.

Suspension of certain prohibitions on proper occasions, see § 29-5-95.

OPINIONS OF THE ATTORNEY GENERAL

The statute does not apply to Mississippi Department of Corrections facilities. Johnson, July 10, 2002, A.G. Op. #02-0384.

§ 29-5-87. Injuries to structures or vegetation.

It is forbidden to step or climb upon, remove, or in any way injure any statue, seat, wall, fountain, or other erection or architectural feature, or any tree, shrub, plant, or turf in such grounds.

HISTORY: Codes, 1942, § 8952-21; Laws, 1972, ch. 326, § 22, eff 30 days after passage (Enacted April 5, 1972, without approval of Governor).

Cross References — Jurisdiction to enforce provisions of this section see § 29-5-77.
Penalties for violation of this section, see § 29-5-93.
Suspension of certain prohibitions on proper occasions, see § 29-5-95.
Penalty for defacing capitol building, see § 97-7-9.

§ 29-5-89. Discharge of firearms or explosives, setting fires, uttering threatening or abusive language.

It is forbidden to discharge any firearm, firework or explosive, set fire to any combustible, make any harangue or oration, or utter loud, threatening, or abusive language in such grounds.

HISTORY: Codes, 1942, § 8952-22; Laws, 1972, ch. 326, § 23, eff 30 days after passage (Enacted April 5, 1972, without approval of Governor).

Cross References — Jurisdiction to enforce provisions of this section see § 29-5-77.
Penalties for violation of this section, see § 29-5-93.
Suspension of certain prohibitions on proper occasions, see § 29-5-95.

§ 29-5-91. Parades and assemblages, display of banners.

It is forbidden to parade, stand, or move in processions or assemblages in such grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement, except as hereinafter provided.

HISTORY: Codes, 1942, § 8952-23; Laws, 1972, ch. 326, § 24, eff 30 days after passage (Enacted April 5, 1972, without approval of Governor).

Cross References — Jurisdiction to enforce provisions of this section see § 29-5-77.
Penalties for violation of this section, see § 29-5-93.
Suspension of certain prohibitions on proper occasions, see § 29-5-95.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of state or local enactments regulating parades. 80 A.L.R.5th 255.

§ 29-5-93. Penalties.

Any person violating provisions of Sections 29-5-83 through 29-5-91 shall be punished by a fine not exceeding one hundred dollars ($100.00), or by imprisonment not exceeding sixty (60) days, or by both such fine and imprisonment. Prosecution for such offenses shall be had in the county court of the First Judicial District of Hinds County, Mississippi, upon affidavit by the attorney general of Mississippi or any of his assistants. In cases where public property is damaged in an amount exceeding one hundred dollars ($100.00), the offenses shall be punishable by imprisonment for not exceeding one (1) year.

HISTORY: Codes, 1942, § 8952-27; Laws, 1972, ch. 326, § 28, eff 30 days after passage (Enacted April 5, 1972, without approval of Governor).

Cross References — Jurisdiction to enforce provisions of this section see § 29-5-77.

§ 29-5-95. Suspension of prohibitions on proper occasions.

On certain occasions of state interest, the Office of General Services is authorized to suspend so much of the prohibitions contained in Sections 29-5-83 through 29-5-91 as would prevent the use of the roads and walks of the capitol grounds by processions or assemblages, and the use upon them of suitable decorations, music, addresses or ceremonies, provided that responsible officers shall have been appointed and arrangements determined which are adequate, in the judgment of the Office of General Services, for the maintenance of suitable order and decorum in the proceedings, and for guarding the properties and grounds from injury.

HISTORY: Codes, 1942, § 8952-24; Laws, 1972, ch. 326, § 25; Laws, 1984, ch. 488, § 23, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Jurisdiction to enforce provisions of this section see § 29-5-77.

JUDICIAL DECISIONS

ANALYSIS

1.-3. [Reserved for future use.]
4. Under former § 29-5-49.

1.-3. [Reserved for future use.]

4. Under former § 29-5-49.

Sections of statutes which authorize certain state officials in their own judgment or discretion to suspend the terms of laws prohibiting certain activities on grounds occupied by capitol buildings, state office buildings and the state executive mansion in favor of other activities of their choice are invalid and unconstitutional. Coppock v. Patterson, 272 F. Supp. 16, 1967 U.S. Dist. LEXIS 7062 (S.D. Miss. 1967).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state or local enactments regulating parades. 80 A.L.R.5th 255.

§ 29-5-97. Mayfair Building renamed the Ike Sanford Veterans Affairs Building.

The Mayfair Building, located at 637 North President Street, Jackson, Mississippi, shall be renamed. The Mayfair Building shall be named the Ike Sanford Veterans Affairs Building.

HISTORY: Laws, 1979, ch. 345, eff from and after July 1, 1979.

Cross References — Description of state grounds, see § 29-5-81.

§ 29-5-99. State Executive Building renamed Heber Ladner Building.

The State Executive Building, located at 401 North Congress Street in Jackson, Mississippi, shall be renamed the Heber Ladner Building. The state building commission shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the Heber Ladner Building, which states the background, accomplishments and service to the state of the Honorable Heber Ladner, Secretary of State of Mississippi from 1948 to 1980.

HISTORY: Laws, 1980, ch. 375, § 1, eff from and after July 1, 1980.

Editor's Notes — Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services.

Cross References — State buildings in custody of the capitol commission, see § 29-5-2.

Description of Heber Ladner Building and other state grounds, see § 29-5-81.

Plaque on building paid for with public funds to acknowledge contribution of taxpayers, see § 29-5-151.

§ 29-5-101. 301 Lamar Street Building renamed the Robert G. Clark, Jr., Building.

The 301 Lamar Street Building in Jackson, Mississippi, shall be renamed the Robert G. Clark, Jr., Building. The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the Robert G. Clark, Jr., Building, which states the background, accomplishments and service to the state of the Honorable Robert G. Clark, Jr.

HISTORY: Laws, 2004, ch. 301, § 1, eff from and after passage (approved Feb. 20, 2004).

Editor's Notes — Laws of 2004, ch. 301, § 1 provides:

"SECTION 1. WHEREAS, Robert G. Clark, Jr., former Speaker Pro Tempore of the Mississippi House of Representatives, completed nine consecutive terms as a member of the Mississippi House of Representatives from District 47, which includes Attala, Holmes and Yazoo Counties; and

"WHEREAS, Mr. Clark, a native of Holmes County, Mississippi, began his journey of contribution to Mississippi by becoming a teacher, coach and principal in our state's school system, where he helped hundreds of youth; and

"WHEREAS, in 1968, Mr. Clark began serving in the Mississippi House of Representatives, where he became known as a fair and honest leader; and

"WHEREAS, during his tenure in the Legislature, Mr. Clark rose from freshman lawmaker to House Education Committee Chairman, where he led the House to pass many monumental educational acts, most notably the 1982 Education Reform Act, the 1984 Vocational Education Reform Act and the recent Education Enhancement Act; and

"WHEREAS, Mr. Clark's legislative career culminated in 1992, when he was elected by his colleagues to the Office of Speaker Pro Tempore, the leadership post second only to the Speaker of the House in which he effectively served and was a role model to many; and

"WHEREAS, as the Speaker Pro Tempore, Mr. Clark served as the Chairman of the House Management Committee, which oversees the vital internal business and personnel affairs of the House; and

"WHEREAS, because of his long and distinguished career of public service to the people of Mississippi, and due to his outstanding work in the community, which is greatly valued by many, including the Mississippi National Association for the Advancement of Colored People (NAACP), we wish to express our appreciation to and respect for Robert G. Clark, Jr., by renaming the 301 Lamar Street Building in his honor; NOW, THEREFORE,"

Cross References — Plaque on building paid for with public funds to acknowledge contribution of taxpayers, see § 29-5-151.

§ 29-5-103. New Justice Building to be named the Carroll Gartin Justice Building.

The new justice building undergoing construction on February 20, 2004 and sitting next to the Carroll Gartin Justice Building at the corner of West and High Streets in Jackson, Mississippi, shall also be named and known as the Carroll Gartin Justice Building upon the demolition of its predecessor. The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the Carroll Gartin Justice Building, which states the background, accomplishments and service to the state of the Honorable Carroll Gartin. Carroll Gartin died while serving his third term as Lieutenant Governor of the State of Mississippi and had spent many years of his adult life in public service, including municipal judge, wartime combat army officer, two-term mayor and three-term Lieutenant Governor.

HISTORY: Laws, 2004, ch. 301, § 2, eff from and after passage (approved Feb. 20, 2004).

Cross References — Plaque on building paid for with public funds to acknowledge contribution of taxpayers, see § 29-5-151.

§ 29-5-105. Authorization for display of "In God We Trust," the 10 Commandments, and the Beatitudes at public buildings and other government property.

(1) "In God We Trust" and the Ten Commandments may be displayed in all public buildings at the discretion of the governing authorities.

(2) The Beatitudes and the Ten Commandments may be displayed on any government property in Mississippi.

HISTORY: Laws, 2005, ch. 504, § 6, eff from and after passage (approved Apr. 20, 2005).

§ 29-5-107. Mississippi Department of Transportation Building designated "William J. 'Billy' McCoy Building."

The Mississippi Department of Transportation Building, located at 401 North West Street in Jackson, Hinds County, Mississippi, shall be renamed the "William J. 'Billy' McCoy Building." The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the building, that states the background, accomplishments and service to the state of the Honorable William J. "Billy" McCoy. The Department of Finance and Administration in conjunction with the Mississippi Department of Transportation shall erect or cause to be erected proper lettering or signage on the eastern outdoor facade of the building facing North West Street displaying the official name of the building as the "William J. 'Billy' McCoy Building."

HISTORY: Laws, 2011, ch. 508, § 4, eff from and after July 1, 2011.

Editor's Notes — Laws of 2011, ch. 508, § 7, provides:
"SECTION 7. This act shall take effect and be in force from and after its passage [April 26, 2011], except for Sections 4, 5 and 6, which shall take effect and be in force from and after July 1, 2011."

§ 29-5-109. Mississippi Emergency Management Agency Building designated "Haley R. Barbour Building"; portion of public lobby designated "Mississippi Civil Defense/Emergency Management Association Memorial Wall"

(1) The Mississippi Emergency Management Agency Building, located at 1 Mema Drive in Pearl, Rankin County, Mississippi, shall be named the "Haley R. Barbour Building." The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the building, that states the background, accomplishments and service to the state of the Honorable Governor Haley R. Barbour. The Department of Finance and Administration in conjunction with the Mississippi Emergency Management Agency shall erect or cause to be erected proper lettering or signage on the outdoor facade of the building displaying the official name of the building as the "Haley R. Barbour Building."

(2) The northeast corner of the public lobby on the main floor of the Haley R. Barbour Building is designated as the "Mississippi Civil Defense/Emergency Management Association Memorial Wall" to recognize persons who have made significant accomplishments in emergency management.

HISTORY: Laws, 2011, ch. 508, § 5; Laws, 2014, ch. 362, § 1, eff from and after July 1, 2014.

Editor's Notes — Laws of 2011, ch. 508, § 7, provides:
"SECTION 7. This act shall take effect and be in force from and after its passage [April 26, 2011], except for Sections 4, 5 and 6, which shall take effect and be in force from and after July 1, 2011."

§ 29-5-111. Public Employees' Retirement System of Mississippi Building renamed the "Timothy Alan (Tim) Ford Building"

The Public Employees' Retirement System of Mississippi Building, located at 429 Mississippi Street in Jackson, Hinds County, Mississippi, shall be renamed the "Timothy Alan (Tim) Ford Building." The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the building, that states the background, accomplishments and service to the state of the Honorable Timothy Alan (Tim) Ford. The Department of Finance and Administration in conjunction with the Public Employees' Retirement System of Mississippi shall erect or cause to be erected proper lettering or signage on the northern outdoor facade of the building facing Mississippi Street displaying the official name of the building as the "Timothy Alan (Tim) Ford Building." Nothing in this section shall infringe on the authority or responsibilities of the Board of Trustees as it relates to the ownership of the Public Employees' Retirement System of Mississippi Building. The Public Employees' Retirement System of Mississippi Building is an asset of the Public Employees' Retirement System Trust Fund by virtue of the Constitution, Section 272-A, and title thereto shall remain in the name of the system. Accordingly, no funds of the system shall be used in the implementation of this section. Any and all funds necessary to accomplish this section will be appropriated by the Legislature for such purpose.

HISTORY: Laws, 2016, ch. 442, § 1, eff from and after July 1, 2016.

§ 29-5-113. Mississippi Department of Environmental Quality Building renamed the "Patrick Alan Nunnelee Building."

The Mississippi Department Of Environmental Quality Building, located at 515 East Amite Street in Jackson, Hinds County, Mississippi, shall be renamed the "Patrick Alan Nunnelee Building." The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the building, that states the background, accomplishments and service to the state of the Honorable Congressman Patrick Alan Nunnelee. The Department of Finance and Administration in conjunction with the Mississippi Department Of Environmental Quality shall erect or cause to be erected proper lettering or signage on the northern outdoor facade of the building facing Amite Street displaying the official name of the building as the "Patrick Alan Nunnelee Building." Any and all funds necessary to accomplish this act will be appropriated by the Legislature for such purpose.

HISTORY: Laws, 2017, ch. 387, § 1, eff from and after July 1, 2017.

PLAQUES ON PUBLIC BUILDINGS

Sec.
29-5-151. Plaque on building paid for with public funds to acknowledge contribution of taxpayers.

§ 29-5-151. Plaque on building paid for with public funds to acknowledge contribution of taxpayers.

Whenever a sign or plaque is to be placed upon a building or other facility or structure, which is constructed and located in the state and paid for wholly or partially by funds of the state or any political subdivision thereof, upon completion of the construction of the building to commemorate or honor the architects, contractors and builders of the building and/or any of the governing authorities in office at that time, the persons responsible for designing and constructing the sign or plaque shall have placed upon it, above the names of anyone else and in prominent lettering which is the same size or larger than any other lettering on the sign or plaque, the words "This Building (or Facility or Structure) Was Paid For By The Taxpayers of ________" (indicating the State of Mississippi and/or any other political subdivision or subdivisions thereof which funded the construction of the building).

This section shall apply only to buildings or other facilities or structures, the construction of which is completed on or after July 1, 1980.

HISTORY: Laws, 1980, ch. 370, eff from and after July 1, 1980.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The words "constructing the sign or plague" were changed to "constructing the sign or plaque." The Joint Committee ratified the correction at its April 28, 1999, meeting.

Cross References — Authority of counties to construct various buildings, see §§ 19-3-41, 19-5-33, 19-5-45, 19-5-47, 19-7-1, 19-9-1.

Municipal buildings, see § 21-37-1.

OPINIONS OF THE ATTORNEY GENERAL

If a structure was wholly or partially paid for by funds from the state or any political subdivision, then the specific wording required by Section 29-5-151 must be placed on the sign or plaque. However, Section 29-5-151 imposes no requirement that a plaque be placed, but only addresses the wording to be used in the event a plaque is placed. Galloway, August 14, 1995, A.G. Op. #95-0546.

REGULATION OF SMOKING IN PUBLIC BUILDINGS

Sec.
29-5-160. Short title.
29-5-161. Smoking prohibited in government and university or college classroom buildings; exceptions.
29-5-163. Section 29-5-161 not to be construed to permit smoking where otherwise restricted or to prohibit adoption of certain ordinances.

§ 29-5-160. Short title.

Sections 29-5-160 through 29-5-163 shall be known and may be cited as the "Mississippi Clean Indoor Air Act."

HISTORY: Laws, 2006, ch. 470, § 1 eff from and after July 1, 2006.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the undesignated heading substituting "Regulation of smoking in Public Building" for "Regulation of Smoking in State Office Building." The Joint Committee ratified the correction at its June 26, 2007, meeting.

§ 29-5-161. Smoking prohibited in government and university or college classroom buildings; exceptions.

(1) As used in this section:

(a) "Smoke" or "smoking" means inhaling, exhaling, burning, carrying or otherwise possessing any lighted cigarette, cigar, pipe or any other object or device of any form that contains lighted tobacco.

(b) "Government building" means all state buildings identified in Section 29-5-2(a)(i) through (iv), the Public Employees' Retirement System Building and any other facility in the state that is owned or leased by the State of Mississippi or any agency, department or institution of the state and that is used for housing state employees during the time of performance of their regular duties for the state; any building owned, rented, leased, occupied or operated by the state, including the legislative, executive and judicial branches of state government; any county, municipality or any other political subdivision of the state; any public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government. If only part of a facility is leased by the state or an agency, department or institution of the state, or any county, municipality or other political subdivision of the state, only the leased part of the facility will be considered to be a government building for the purposes of this definition. The term "government building" shall not include any building owned or leased by the state institutions of higher learning or the public community and junior colleges or any space in a government building used by law enforcement officers.

(c) "University or college classroom building" means any building used by the state institutions of higher learning or the public community and junior colleges exclusively for student instructional purposes. The term includes classrooms, auditoriums, theaters, laboratories, hallways and restrooms. Smoking policies applicable in the private offices of faculty and staff and other "smoking permitted" space may be determined by each academic and administrative department.

(2) No person shall smoke in any government building, except as follows: The State Veterans Affairs Board may designate smoking areas in the state veterans homes operated by the board in which smoking will be permitted.

(3) No person shall smoke in any university or college classroom building.

(4) The person, agency or entity having jurisdiction or supervision over a government building or university/college classroom building shall not allow smoking in the government or university/college classroom building, except in designated smoking areas as authorized in subsection (2) of this section, and shall use reasonable efforts to prevent smoking in such building, including, but not limited to, the following:

(a) Posting appropriate signs informing employees, invitees, guests and other persons that smoking is prohibited in the building.

(b) Securing the removal of persons who smoke in the building.

HISTORY: Laws, 2000, ch. 551, § 1; Laws, 2004, ch. 301, § 5; Laws, 2006, ch. 470, § 2; Laws, 2007, ch. 386, § 1; Laws, 2017, ch. 330, § 3, eff from and after passage (approved Mar. 13, 2017).

OPINIONS OF THE ATTORNEY GENERAL

Because there is no prohibition on smoking on the grounds of government buildings, the appropriate governing authority retains its discretion to manage its property and to designate smoking areas outside the building. Stringer, July 26, 2006, A.G. Op. 06-0317.

§ 29-5-163. Section 29-5-161 not to be construed to permit smoking where otherwise restricted or to prohibit adoption of certain ordinances.

Section 29-5-161 shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or to prohibit any municipality or county from adopting additional ordinances with regard to the use of smoking in public places.

HISTORY: Laws, 2006, ch. 470, § 3 eff from and after July 1, 2006.

Cross References — "Smoking" defined, see § 29-5-161.

CAPITOL COMPLEX IMPROVEMENT DISTRICT

Sec.

29-5-201. Definitions.
29-5-203. Capitol Complex Improvement District created; composition.
29-5-205. Executive Director of Department of Finance and Administration to implement, supervised and administer improvement projects.
29-5-207. Department of Finance and Administration to make reasonable efforts when placing out for bid department contracts to increase pool of qualified DBE bidders.
29-5-209. Comprehensive plan for improvement projects.
29-5-211. Comprehensive plan and updates to be posted on Department of Finance and Administration website.
29-5-213. Capitol Complex Improvement District Advisory Committee created; composition.

Sec.
29-5-215. Capitol Complex Improvement District Project Fund created; use of fund money; Department of Finance and Administration authorized to incur debt to pay costs of implementing and administering improvement projects in the district.
29-5-217. Responsibility of City of Jackson to provide police coverage for major events conducted within district and to maintain district infrastructure and completed improvement projects.

§ 29-5-201. Definitions.

As used in Sections 29-5-201 through 29-5-217:

(a) "District" means the Capitol Complex Improvement District.

(b) "Improvement projects" means the following types of projects in the public areas of the district:

(i) Street reconstruction, resurfacing and other repairs to roadways, curbs and gutters;

(ii) Bridge construction, reconstruction and repair;

(iii) Reconstructing and repairing of surface water drainage systems including street drains, ditches, culverts and other components of the system;

(iv) Installing and replacing street lighting;

(v) Installing and replacing traffic signals;

(vi) Installation of new water and sewer lines and rehabilitation of existing water and sewer lines serving the district, including those portions extending beyond the district boundary required to perform the work;

(vii) Reconstruction and repair of parks and public rights-of-way;

(viii) Reconstruction and repair of sidewalks along public streets;

(ix) Planting and replacing landscaping materials, trees, and site amenities within public parks and rights-of-way;

(x) Relocation underground of power and communication lines serving the district, including those portions extending beyond the district boundary required to perform the work; and

(xi) Infrastructure, public safety, and other improvements as determined necessary by the Executive Director of the Department of Finance and Administration.

HISTORY: Laws, 2017, ch. 444, § 1, eff from and after July 1, 2017.

§ 29-5-203. Capitol Complex Improvement District created; composition.

There is created the Capitol Complex Improvement District to be composed of the following described area in the City of Jackson, Mississippi, that surrounds the State Capitol Building:

CAPITOL COMPLEX PROPOSED BOUNDARIES

- Beginning at a point on the west bank of the Pearl River determined by extending the south curb line of High Street east until it meets the bank of the Pearl River;

- Then north along the west bank of the Pearl River (extending along the southern boundary of LeFleur's Bluff State Park) until it reaches a point on such bank determined by extending the east curb line of Ridgewood Road south until it meets the bank of the Pearl River;
- Then north along such line determined by extending the east curb line of Ridgewood Road and continuing along such curb line until it reaches the northern drainage ditch of Eastover Drive;
- Then west along the northern drainage ditch and curb line of Eastover Drive until it reaches the western curb line of the west frontage road of I-55;
- Then south along the west curb line of such frontage road until it reaches the northern curb line of Lakeland Drive;
- Then west along the northern curb line of Lakeland Drive until it reaches the eastern curb line of Old Canton Road;
- Then north along the east curb line of Old Canton Road until it reaches the northern curb line of Meadowbrook Road;
- Then west along the north curb line of Meadowbrook Road to the west curb line of North State Street;
- Then south along the west curb line of North State Street to the north curb line of Hartfield Street;
- Then west along the north curb line of Hartfield Street to the west curb line of Oxford Avenue;
- Then south on the west curb line of Oxford Avenue to the north curb line of Mitchell Avenue which becomes Stonewall Street;
- Then west along the north curb line of Mitchell Street and then Stonewall Street until it reaches the west curb line of Livingston Road;
- Then south along the west curb line of Livingston Road until it reaches the south curb line of Woodrow Wilson Drive;
- Then east along the south curb line of Woodrow Wilson Drive to the west curb line of Bailey Avenue (which becomes Gallatin Street);
- Then south along the west curb line of Bailey Avenue and then Gallatin Street until it reaches the north curb line of West Capitol Street;
- Then west along the north curb line of West Capitol Street until it intersects with the north curb line of Robinson Road;
- Then west on the north curb line of Robinson Road until it intersects with the west curb line of Prentiss Street;
- Then south along the west curb line of Prentiss Street until it intersects with the north curb line of John R. Lynch Street on the west side of Jackson State University;
- Then west on the north curb line of John R. Lynch Street until it reaches the west curb line of Valley Street;
- Then south along the west curb line of Valley Street until it reaches the south curb line of Morehouse Street;
- Then east along the south curb line of Morehouse Street until it reaches the west curb line of Dalton Street;

- Then south along the west curb line of Dalton Street until it reaches the south curb line of Florence Avenue;
- Then east along the south curb line of Florence Avenue until it reaches the east curb line of University Blvd. (Terry Road);
- Then north and along the east curb line of University Blvd. until it reaches the south curb line of Hooker Street;
- Then east along the south curb line of Hooker Street extending in a straight line to the railroad tracks;
- Then north on the west side of such railroad tracks to the south curb line of South Street;
- Then east on South Street to the east curb line of Jefferson Street and extend the south curb line of South Street in a straight line to the east to the western edge of I-55;
- Then north along the western edge of I-55 until it reaches the south curb line of High Street;
- Then east along the south curb line of High Street and extending such line to the Pearl River and the point of the beginning.

HISTORY: Laws, 2017, ch. 444, § 2, eff from and after July 1, 2017.

§ 29-5-205. Executive Director of Department of Finance and Administration to implement, supervised and administer improvement projects.

(1) The Executive Director of the Department of Finance and Administration or his or her designee shall implement, supervise and administer improvement projects paid for with funds from the Capitol Complex Improvement District Project Fund, and may accept funds and services from other sources to use for the purposes provided in Sections 29-5-201 through 29-5-217.

(2) Subject to the limitation on funds provided for in Section 29-5-215, the executive director may employ persons as he or she considers necessary for the proper implementation, supervision and administration of improvement projects funded in whole or in part by funds from the Capitol Complex Improvement District Project Fund.

(3) Subject to the limitation on funds provided for in Section 29-5-215, the Department of Finance and Administration shall be reimbursed from the Capitol Complex Improvement District Project Fund for the cost of providing necessary personnel, services and other expenses it incurs in performing its duties under Sections 29-5-201 through 29-5-217.

HISTORY: Laws, 2017, ch. 444, § 3, eff from and after July 1, 2017.

Cross References — Capitol Complex Improvement District Project Fund, see § 29-5-215.

§ 29-5-207. Department of Finance and Administration to make reasonable efforts when placing out for bid department contracts to increase pool of qualified DBE bidders.

The Department of Finance and Administration shall make commercially reasonable efforts to place out for bid, such that Mississippi Contractors and Mississippi Disadvantaged Business Enterprises ("DBEs") shall have an equal opportunity to respond to such bid, any contract by the department which (a) is subject to tax pursuant to Section 27-65-21 (i.e., contracts for constructing, building, erecting, grading, excavating, etc.), and (b) will be paid, or payment thereunder by the department will be reimbursed, using any portion of the funds in the Capitol Complex Improvement District Project Fund created in Section 29-5-215. In carrying out such efforts, in order to increase the pool of qualified DBE bidders, the department will request that successful prime contract bidders include in their response a commitment to (a) participate in and/or host forums that highlight subcontract bidding opportunities for DBEs; and (b) work with various trade associations and the Mississippi Development Authority to promote increased participation from DBEs.

HISTORY: Laws, 2017, ch. 444, § 4, eff from and after July 1, 2017.

§ 29-5-209. Comprehensive plan for improvement projects.

The Department of Finance and Administration shall develop and adopt a comprehensive plan for improvement projects in consultation with the Capitol Complex Improvement District Project Advisory Committee. Improvement projects shall be coordinated with the City of Jackson to the greatest extent possible. The plan shall attempt to incorporate the needs of the city, the Department of Finance and Administration, Jackson State University, the University of Mississippi Medical Center, the Mississippi Department of Archives and History, and the commission established by the City of Jackson pursuant to Section 27-65-241. Any plans developed by the Department of Finance and Administration shall not duplicate efforts undertaken by such commission. Improvement projects undertaken under Sections 29-5-201 through 29-5-217 shall comport with the plan and shall not be subject to approvals, permits or fees assessed by the City of Jackson. The plan may be updated at any time and shall be completely updated every five (5) years.

HISTORY: Laws, 2017, ch. 444, § 5, eff from and after July 1, 2017.

§ 29-5-211. Comprehensive plan and updates to be posted on Department of Finance and Administration website.

The Department of Finance and Administration shall post the comprehensive plan and any updates on their website as well as an annual status report of all projects funded under Sections 29-5-201 through 29-5-217.

HISTORY: Laws, 2017, ch. 444, § 6, eff from and after July 1, 2017.

§ 29-5-213. Capitol Complex Improvement District Advisory Committee created; composition.

(1) There is created the Capitol Complex Improvement District Project Advisory Committee composed of the following nine (9) members:

(a) The Mayor of the City of Jackson or his or her designee;

(b) One (1) member appointed by the City Council of the City of Jackson with an initial term of one (1) year and subsequent regular terms of four (4) years;

(c) Two (2) members appointed by the Governor, one (1) for an initial term of two (2) years and one (1) for an initial term of four (4) years, both with subsequent regular terms of four (4) years;

(d) One (1) member appointed by the Lieutenant Governor for an initial term of four (4) years and subsequent regular terms of four (4) years;

(e) One (1) member appointed by the Speaker of the House of Representatives for an initial term of two (2) years and subsequent regular terms of four (4) years;

(f) One (1) member appointed by the President of Jackson State University;

(g) One (1) member appointed by the Vice Chancellor for Health Affairs of University of Mississippi Medical Center; and

(h) The Director of the City of Jackson Department of Public Works or his or her designee.

The member appointed under paragraph (b) of this subsection (1) shall be a resident of the City of Jackson in Hinds County.

(2) Members appointed to the committee shall not also serve as members of the commission established by the City of Jackson pursuant to Section 27-65-241. Appointed members shall serve without compensation at the will and pleasure of the appointing authority.

(3) The committee shall elect a chairman and such other officers as it considers necessary from among its members.

(4) A majority of the members of the committee shall constitute a quorum for the conduct of meetings and all actions of the committee shall be by a majority vote.

(5) The committee shall consult with the Department of Finance and Administration and advise the department in the development of comprehensive plans for improvement projects in the city and any changes to such plans.

(6) The committee shall meet, subject to call by the Executive Director of the Department of Finance and Administration, at least quarterly to conduct business.

HISTORY: Laws, 2017, ch. 444, § 7, eff from and after July 1, 2017.

§ 29-5-215. Capitol Complex Improvement District Project Fund created; use of fund money; Department of Finance and Administration authorized to incur debt to pay costs of implementing and administering improvement projects in the district.

(1) There is created in the State Treasury the Capitol Complex Improvement District Project Fund, into which shall be deposited the money specified in Section 27-65-75(1)(c) and such other money from whatever source derived.

(2) An amount not to exceed five percent (5%) of the amount deposited into the fund may be utilized to reimburse the Department of Finance and Administration for the cost of providing necessary personnel, services or other expenses it incurs in performing its duties under Sections 29-5-201 through 29-5-217.

(3) An amount not to exceed ten percent (10%) of the amount deposited into the fund may be utilized, in the discretion of the Executive Director of the Department of Finance and Administration, to compensate the City of Jackson for general police and fire protection provided by the city in the Capitol Complex Improvement District created in Section 29-5-203 and for police coverage for major events conducted within such district.

(4) An amount of not less than eighty-five percent (85%) of the amount deposited into the fund, which shall be designated as "improvement project funds," shall be utilized within the district for improvement projects in accordance with the comprehensive plan described in Section 29-5-209. In addition to fully funding improvement projects, money in the fund may be utilized to fund a portion of an improvement project in cases in which other funds are available for a project and may be used as leverage or matching funds for projects in the district that comport with the district's comprehensive plan.

(5) Money in the fund shall be expended upon appropriation by the Legislature. Unexpended amounts remaining in the fund at the end of the state fiscal year shall not lapse into the State General Fund, and investment earnings on amounts in the fund shall be deposited to the credit of the fund.

(6) The Department of Finance and Administration, with the concurrence of the State Bond Commission, is authorized to incur debt, including notes or other evidences of indebtedness, for the purpose of paying the costs of implementing and administering the improvement projects outlined in the comprehensive plan established pursuant to Section 29-5-209. Any debt incurred to pay such costs may be secured by the sales tax revenue that is required to be deposited to the Capitol Complex Improvement District Project Fund under Section 27-65-75(1)(c). All notes or certificates of indebtedness issued for purposes of this subsection shall mature in approximately equal installments of principal and interest over a period not to exceed five (5) years from the date of issuance thereof. The maximum amount of debt that may be incurred by the Department of Finance and Administration under this subsection shall not exceed Seven Million Dollars ($7,000,000.00).

HISTORY: Laws, 2017, ch. 444, § 8, eff from and after July 1, 2017; Laws, 2018, ch. 363, § 1, eff from and after passage (approved March 16, 2018).

§ 29-5-217. Responsibility of City of Jackson to provide police coverage for major events conducted within district and to maintain district infrastructure and completed improvement projects.

(1) The City of Jackson shall provide police coverage for major events conducted within the district.

(2) The City of Jackson shall maintain all infrastructure and completed improvement projects within the district.

HISTORY: Laws, 2017, ch. 444, § 9, eff from and after July 1, 2017.

CHAPTER 7.

MINERAL LEASES OF STATE LANDS

Sec.
29-7-1. Transfer of duties and responsibilities of mineral lease commission to Major Economic Impact Authority.
29-7-3. Lease of state lands for minerals; exploration or testing permits; mineral royalties; Gulf and Wildlife Protection Fund; authority to lease; restrictions on offshore drilling.
29-7-5. Drilling contracts.
29-7-7. Pipe lines.
29-7-9. Record.
29-7-11. Repealed.
29-7-13. Proceeds of leases.
29-7-14. Proceeds from leases of sixteenth section school lands or lieu lands located in area defined as coastal wetlands.
29-7-15. Repealed.
29-7-17. Civil and criminal penalties to enforce Section 29-7-3.
29-7-19. Hearings.
29-7-21. Appeals.

§ 29-7-1. Transfer of duties and responsibilities of mineral lease commission to Major Economic Impact Authority.

(1) The Mississippi Major Economic Impact Authority shall be the mineral lease commission, and shall exercise the duties and responsibilities of the mineral lease commission under the provisions of Section 29-7-1 et seq.

(2) The words "mineral lease commission," whenever they may appear in the laws of the State of Mississippi, shall be construed to mean the Mississippi Major Economic Impact Authority.

(3) The term "commission" means the Mississippi Major Economic Impact Authority.

HISTORY: Codes, 1942, § 5947; Laws, 1932, ch. 114; Laws, 1936, ch. 191; Laws, 1944, ch. 239, § 1; Laws, 1978, ch. 458, § 23; Laws, 1978, ch. 484, § 31; Laws, 2000, ch. 516, § 6; Laws, 2004, ch. 482, § 1, eff from and after July 1, 2004.

Cross References — Qualifications of attorney general, see § 7-5-1.
Duties of state treasurer generally, see § 7-9-9.
Duties and powers of the Secretary of State generally, see § 7-11-11.
Easements for pipelines over state-owned land, see §§ 29-1-101 et seq.
State oil and gas board generally, see §§ 53-1-1 et seq.
Agreements by public officers for cooperative development and operation of oil, gas, and mineral leases, see § 53-3-51.

RESEARCH REFERENCES

ALR.

Right of mineral lessee to deposit topsoil, waste materials, and the like on the lessor's additional land not being mined. 26 A.L.R.2d 1453.

Construction and effect of provision in

mineral lease excusing payment of minimum rent or royalty. 28 A.L.R.2d 1013.

Am. Jur.

38 Am. Jur. 2d, Gas and Oil §§ 1-4, 307, 308.

53A Am. Jur. 2d, Mines and Minerals §§ 31 et seq.

Law Reviews.

1982 Mississippi Supreme Court Review: Miscellaneous: Mineral Leasing of State-Owned Lands. 53 Miss LJ 199, March 1983.

§ 29-7-3. Lease of state lands for minerals; exploration or testing permits; mineral royalties; Gulf and Wildlife Protection Fund; authority to lease; restrictions on offshore drilling.

There shall be no development or extraction of oil, gas, or other minerals from state-owned lands by any private party without first obtaining a mineral lease therefor from the commission. The commission is hereby authorized and empowered, for and on behalf of the state, to lease any and all of the state land now owned (including that submerged or whereover the tide may ebb and flow) or hereafter acquired, to some reputable person, association, or company for oil and/or gas and/or other minerals in and under and which may be produced therefrom, excepting, however, sixteenth section school land, lieu lands, and such forfeited tax land and property the title to which is subject to any lawful redemption, for such consideration and upon such terms and conditions as the commission deems just and proper. No mineral lease of offshore lands shall allow offshore drilling operations north of the coastal barrier islands, except in Blocks 40, 41, 42, 43, 63, 64 and 66 through 98, inclusive. Further, surface offshore drilling operations will not be allowed within one (1) mile of Cat Island. The commission may only offer for lease the state-owned lands in Blocks 40, 41, 42, 43, 63, 64 and 66 through 98, inclusive, as shown on the Mississippi Department of Environmental Quality Bureau of Geology Plat of Lease Blocks (Open File Report 151) on terms and conditions and for a length of time as determined by the commission. The commission may not lease any lands or submerged lands off the Mississippi Gulf Coast that have been leased by the Department of Marine Resources before January 1, 2004, for any public or private oyster reef lease or any lands or submerged lands within one (1) mile of that lease for the purposes of drilling offshore for oil, gas and other minerals.

Consistent with the conservation policies of this state under Section 53-1-1 et seq., the commission may offer for public bid any tracts or blocks of state-owned lands not currently under lease, which have been identified to the commission as having development potential for oil or natural gas, not less than once a year. Upon consultation with the Office of Geology in the Mississippi Department of Environmental Quality, the Secretary of State and any other state agency as the commission deems appropriate, the commission shall promulgate rules and regulations consistent with this chapter governing all aspects of the process of leasing state lands within its jurisdiction for mineral development, including the setting of all terms of the lease form to be used for leasing state-owned lands, any necessary fees, public bidding process, delay rental payments, shut-in royalty payments, and such other provisions as may be required. The Attorney General shall review the lease form adopted by the commission for legal sufficiency.

There shall not be conducted any seismographic or other mineral exploration or testing activities on any state-owned lands within the mineral leasing jurisdiction of the commission without first obtaining a permit therefor from the commission. Upon consultation with the Office of Geology in the Mississippi Department of Environmental Quality, the Secretary of State and any other state agency as the commission deems appropriate, the commission shall promulgate rules and regulations governing all aspects of seismographic or other mineral exploration activity on state lands within its jurisdiction, including the establishing of fees and issuance of permits for the conduct of such mineral exploration activities. The Attorney General shall review the permit form adopted by the commission for legal sufficiency. Provided, however, that persons obtaining permits from the commission for seismographic or other mineral exploration or testing activities on state-owned wildlife management areas, lakes and fish hatcheries, shall be subject to rules and regulations promulgated therefor by the Mississippi Commission on Wildlife, Fisheries and Parks which shall also receive all permit fees for such testing on said lands. In addition, persons obtaining permits from the commission for seismographic or other mineral exploration or testing activities on state-owned marine waters shall be subject to rules and regulations promulgated therefor by the Mississippi Department of Marine Resources which shall also receive all permit fees for such testing on those waters.

Further, provided that each permit within the Mississippi Sound or tidelands shall be reviewed by the Mississippi Commission on Marine Resources and such special conditions as it may specify will be included in the permit. Information or data obtained in any mineral exploration activity on any and all state lands shall be disclosed to the state through the commission, upon demand. Such information or data shall be treated as confidential for a period of ten (10) years from the date of receipt thereof and shall not be disclosed to the public or to any firm, individual or agency other than officials or authorized employees of this state. Any person who makes unauthorized disclosure of such confidential information or data shall be guilty of a misdemeanor, and upon conviction thereof, be fined not more than Five Thousand Dollars ($5,000.00) or imprisoned in the county jail not more than one (1) year, or both.

Whenever any such land or property is leased for oil and gas and/or other minerals, such lease contract shall provide for a lease royalty to the state of at least three-sixteenths (3/1$_6$) of such oil and gas or other minerals, same to be paid in the manner prescribed by the commission. Of the monies received in connection with the execution of such leases, five-tenths of one percent (5/1$_0$ of 1%) shall be retained in a special fund to be appropriated by the Legislature, One Hundred Thousand Dollars ($100,000.00) of which amount to be used by the commission for the administration of the leasing and permitting under this section, and the remainder of such amount shall be deposited into the

Education Trust Fund, created in Section 206A, Mississippi Constitution of 1890; and two percent (2%) shall be paid into a special fund to be designated as the "Gulf and Wildlife Protection Fund," to be appropriated by the Legislature, one-half (½) thereof to be apportioned as follows: an amount which shall not exceed One Million Dollars ($1,000,000.00) shall be used by the Mississippi Department of Wildlife, Fisheries and Parks and the Mississippi Department of Marine Resources solely for the purpose of cleanup, remedial or abatement actions involving pollution as a result of the exploration or production of oil or gas, and any amount in excess of such One Million Dollars ($1,000,000.00) shall be deposited into the Education Trust Fund, created in Section 206A, Mississippi Constitution of 1890. The remaining one-half (½) of such Gulf and Wildlife Protection Fund to be apportioned as follows: an amount which shall not exceed One Million Dollars ($1,000,000.00) shall be used by the Mississippi Commission on Wildlife, Fisheries and Parks and the Mississippi Department of Marine Resources for use first in the prudent management, preservation, protection and conservation of existing waters, lands and wildlife of this state and then, provided such purposes are accomplished, for the acquisition of additional waters and lands and any amount in excess of such One Million Dollars ($1,000,000.00) shall be deposited into the Education Trust Fund, created in Section 206A, Mississippi Constitution of 1890. However, in the event that the Legislature is not in session to appropriate funds from the Gulf and Wildlife Protection Fund for the purpose of cleanup, remedial or abatement actions involving pollution as a result of the exploration or production of oil or gas, then the Mississippi Department of Wildlife, Fisheries and Parks and the Mississippi Department of Marine Resources may make expenditures from this special fund account solely for said purpose. The commission may lease the submerged beds for sand and gravel on such a basis as it may deem proper, but where the waters lie between this state and an adjoining state, there must be a cash realization to this state, including taxes paid for such sand and gravel, equal to that being had by such adjoining state, in all cases the requisite consents therefor being lawfully obtained from the United States.

The Department of Environmental Quality is authorized to employ competent engineering personnel to survey the territorial waters of this state in the Mississippi Sound and the Gulf of Mexico and to prepare a map or plat of such territorial waters, divided into blocks of not more than six thousand (6,000) acres each with coordinates and reference points based upon longitude and latitude surveys. The commission is authorized to adopt such survey, plat or map for leasing of such submerged lands for mineral development; and such leases may, after the adoption of such plat or map, be made by reference to the map or plat, which shall be on permanent file with the commission and a copy thereof on file in the Office of the State Oil and Gas Board.

HISTORY: Codes, 1942, § 5948; Laws, 1932, ch. 114; Laws, 1942, ch. 241; Laws, 1968, ch. 608, § 1; Laws, 1982, ch. 455, § 1; Laws, 1984, ch. 488, § 187; Laws, 1986, ch. 399, § 1; Laws, 2000, ch. 516, § 7; Laws, 2004, ch. 482, § 2, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "of" was substituted for the word "on" so that "Department on Marine Resource" reads "Department of Marine Resources" everywhere it appears in the section. The Joint Committee ratified this correction at its August 5, 2008, meeting.

Editor's Notes — Laws of 2004, ch. 482, § 6 provides:

"SECTION 6. From and after July 1, 2004, the board of supervisors of a county shall reduce the ad valorem taxes levied by the county in an amount equal to one-half (½) of the county's share of the revenue derived from the oil and gas severance tax under Sections 27-25-505 and 27-25-705 as a result of offshore drilling on the Mississippi Gulf Coast. From and after July 1, 2004, the governing authorities of a municipality shall reduce the ad valorem taxes levied by the municipality in an amount equal to one-half (½) of the municipality's share of the revenue derived from the oil and gas severance tax under Sections 27-25-505 and 27-25-705 as a result of offshore drilling on the Mississippi Gulf Coast."

Cross References — Leasing of mineral interests retained by county on land conveyed for state park purposes, see § 19-7-21.

Mineral leases of sixteenth section lands and lieu lands, see § 29-3-99.

Civil and criminal proceedings and penalties for enforcement of this section, see § 29-7-17.

State oil and gas board, generally, see §§ 53-1-1 et seq.

Agreements for cooperative development and operation of oil, gas and mineral leases by public officers, see § 53-3-51.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Lands under nonnavigable waters subject to ebb and flow of tide are within public trust given to states upon their entry into Union; therefore, state had power to issue oil and gas leases for those lands despite claims of private claimants who traced their record title to lands to prestatehood Spanish land grants. Phillips Petroleum Co. v. Mississippi, 484 U.S. 469, 108 S. Ct. 791, 98 L. Ed. 2d 877, 1988 U.S. LEXIS 939 (U.S. 1988).

Members of State Mineral Lease Commission which held void deeds to complainant's realty could be made defendants under statute authorizing cancellation suit by rightful owner against person holding invalid deeds, although Commission had not taken actual possession of or trespassed upon realty. State Mineral Lease Com. v. Lawrence, 171 Miss. 442, 157 So. 897, 1934 Miss. LEXIS 265 (Miss. 1934).

Rule that equity will not proceed until all parties whose interests will be substantially affected by decree are before court and fact that State was real party in interest did not preclude suit against members of State Mineral Lease Commission to cancel void deeds to complainant's realty held by Commission. State Mineral Lease Com. v. Lawrence, 171 Miss. 442, 157 So. 897, 1934 Miss. LEXIS 265 (Miss. 1934).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gas and Oil § 307.

53A Am. Jur. 2d, Mines and Minerals §§ 31 et seq.

17 Am. Jur. Pl & Pr Forms (Rev), Mines and Minerals, Forms 1 et seq. (acquiring, clearing, and defending mining rights and titles).

12B Am. Jur. Legal Forms 2d, Mines and Minerals §§ 175:224 et seq. (mining leases).

CJS.

58 C.J.S., Mines and Minerals § 171.

Law Reviews.

1982 Mississippi Supreme Court Review: Miscellaneous: Mineral Leasing of State-Owned Lands. 53 Miss. L. J. 199, March 1983.

§ 29-7-5. Drilling contracts.

When any state land mentioned in this chapter is known to be within a well defined proven oil and/or gas field, is subject to waste or dissipation, has not been heretofore leased or under contract, is so situated that the production of such oil and/or gas is needed and useful to the state for any of its buildings and/or institutions and can be profitably used because any such state-owned building or institution is situated thereon or in the immediate vicinity thereof, or when the state needs to drill any well or wells to protect its mineral resources, the said commission is authorized and empowered, in its discretion, to make contracts within the limit of appropriations made for such purposes; said contracts to be let, in the manner now provided by law for letting public contracts, for drilling a well or wells on such land or lands mentioned in this section for oil and/or gas, completing the said well or wells as a producer of oil and/or gas, and connecting any such well or wells to any such state-owned property or institution for use of the production therefrom for fuel or other purposes.

The commission is hereby further authorized and empowered in its discretion to proceed to drill under its own direction such well or wells on such state land as it may deem advisable, and to employ such drillers and employees as will be necessary in carrying on such operations; and said commission is further authorized in its discretion to purchase, lease, or hire any machinery, tools, and other equipment necessary for drilling such well or wells, to be paid for by the commission out of any funds appropriated by the legislature for the purpose of carrying out the provisions of this chapter. The said commission may, in its discretion, sell or contract the sale of any surplus oil and/or gas not needed by any state building or institution produced from any such well or wells, or may exchange or dispose of any of same by reciprocal agreement in order to serve any distant state-owned institution, but any oil, gas and/or other mineral so disposed of shall not be so disposed of at any amount or value less than the market price thereof.

Said commission shall determine in all cases whether it would be to the best interest of the state to dispose of said resources by lease or proceed by contract to drill to the actual exploration and exploitation of said resources by the state itself, and shall be governed entirely by a consideration of the best interest of the state.

HISTORY: Codes, 1942, § 5949; Laws, 1932, ch. 114; Laws, 1936, ch. 191.

Cross References — Powers of state oil and gas board generally, see § 53-1-17.

Regulation by state oil and gas board of drilling and production from wells, see § 53-3-5.

RESEARCH REFERENCES

Am. Jur.
9 Am. Jur. Legal Forms 2d, Gas and Oil, §§ 129:673, 129:685. (drilling contracts).

§ 29-7-7. Pipe lines.

The state mineral lease commission is authorized and empowered to contract for the construction and/or laying and operation of a suitable state-owned pipe line or lines for the transportation of any state-owned natural gas and/or oil for use by the state-owned buildings and/or institutions as fuel or other purposes, whenever said commission shall determine that the same will be for the best interest of the state and/or any of its buildings or institutions. Said commission shall construct and lay any such state-owned pipe line mentioned in this section where practicable in, under, and along any street, alley, sidewalk, road, or other public property, and where necessary may exercise the right of eminent domain for sufficient right of way and/or easement in, under, and along private property in the manner provided by law for the exercise of the right of eminent domain by the state in other cases.

HISTORY: Codes, 1942, § 5950; Laws, 1932, ch. 114.

Editor's Notes — Section 29-7-1 provides that the words "mineral lease commission," wherever they may appear in the laws of the State of Mississippi, shall be construed to mean the Mississippi Commission on Natural Resources.

Section 49-2-6 however, provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Right of eminent domain for pipelines, see § 11-27-47.

Power of municipality to grant rights of way for pipelines, see § 21-27-5.

Easements for pipelines over stated owned lands, see §§ 29-1-101 et seq.

RESEARCH REFERENCES

Am. Jur.
61 Am. Jur. 2d, Pipelines §§ 1-7.

§ 29-7-9. Record.

The state mineral lease commission shall keep a well-bound book for the purpose of keeping the minutes of all its proceedings, contracts, papers, and records, all of which shall be printed or written therein in full, and shall keep a permanent file in such place and manner containing all original contracts and/or leases as shall be designated by the commission.

HISTORY: Codes, 1942, § 5951; Laws, 1932, ch. 114.

Editor's Notes — Section 29-7-1 provides that the words "mineral lease commission," wherever they may appear in the laws of the State of Mississippi, shall be construed to mean the Mississippi Commission on Natural Resources. Subsequently, Section 49-2-6 provided that wherever the term "Mississippi Commission on Natural

Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

§ 29-7-11. Repealed.

Repealed by Laws, 1978, ch. 484, § 32, eff from and after July 1, 1979.
§ 29-7-11. [Codes, 1942, § 5952; Laws, 1932, ch. 114; Laws, 1936, ch. 191]

Editor's Notes — Former § 29-7-11 pertained to the quorum of state mineral commission.

§ 29-7-13. Proceeds of leases.

All sums of money realized and/or received from the sale of any and all oil or gas or other minerals, lease contract, rentals, royalties, or otherwise, contemplated by this chapter, shall be immediately deposited in the general fund of the state treasury.

HISTORY: Codes, 1942, § 5953; Laws, 1932, ch. 114.

§ 29-7-14. Proceeds from leases of sixteenth section school lands or lieu lands located in area defined as coastal wetlands.

That the state mineral lease commission is hereby authorized to pay to the proper local taxing district in which are located sixteenth section school lands or lieu lands that fall within the definition of coastal wetlands, that portion of funds received from leases entered into or royalties received from the exploring or exploiting of oil, gas or other minerals on such lands. Such monies shall be paid to the local taxing district entitled to such funds under the law and used for school purposes.

HISTORY: Laws, 1978, ch. 403, § 1, eff from and after passage (approved March 23, 1978).

Editor's Notes — Section 29-7-1 provides that the words "mineral lease commission," wherever they may appear in the laws of the State of Mississippi, shall be construed to mean the Mississippi Commission on Natural Resources. Subsequently, Section 49-2-6 provided that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Mineral leases of sixteenth section school lands or lieu lands executed by board of supervisors of counties, see § 29-3-99.

Mineral leases of lands of institutions of higher learning, see § 37-101-153.

Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

Oil, gas and other minerals, generally, see §§ 53-1-1 et seq.

§ 29-7-15. Repealed.

Repealed by Laws, 1978, ch. 484, § 32, eff from and after July 1, 1979.
§ 29-7-15. [Codes, 1942, § 5954; Laws, 1932, ch. 114]

Editor's Notes — Former § 29-7-15 related to appropriations for the mineral lease commission.

§ 29-7-17. Civil and criminal penalties to enforce Section 29-7-3.

(1) Any person found by the commission to be violating any of the provisions of Section 29-7-3, or any rule or regulation or written order of the commission in pursuance thereof, or any condition or limitation of a permit shall be subject to a civil penalty of not more than Ten Thousand Dollars ($10,000.00) for each violation, such penalty to be assessed and levied by the commission after a hearing as hereinafter provided. Each day upon which a violation occurs shall be deemed a separate and additional violation. Appeals from the imposition of a civil penalty may be taken to the appropriate chancery court in the same manner as appeals from the orders of the commission. If the appellant desires to stay the execution of a civil penalty assessed by the commission, he shall give bond with sufficient resident sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in an amount equal to double the amount of any civil penalty assessed by the commission, as to which the stay of execution is desired, on the condition that if the judgment shall be affirmed the appellant shall pay all costs of the assessment entered against him.

(2) In lieu of, or in addition to, the penalty provided in subsection (1) of this section, the commission shall have power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Section 29-7-3, rules and regulations promulgated, and orders and permits made and issued thereunder, in the appropriate circuit, chancery, county or justice court of the county in which venue may lie. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and it shall not be necessary in such cases that the state plead or prove: (i) that irreparable damage would result if the injunction did not issue; (ii) that there is no adequate remedy at law; or (iii) that a written complaint or commission order has first been issued for the alleged violation.

(3) Any person who violates any of the provisions of, or fails to perform any duty imposed by, Section 29-7-3 or any rule or regulation issued hereunder, or who violates any order or determination of the commission promulgated pursuant to such section, and causes the death of fish, shellfish, or other wildlife shall be liable, in addition to the penalties provided in subsections (1), (2), (4) and (5) of this section, to pay to the state an additional amount equal to the sum of money reasonably necessary to restock such waters or replenish such wildlife as determined by the commission after consultation with the Mississippi Commission on Wildlife, Fisheries and Parks and the Mississippi Department of Marine Resources. Such amount may be recovered by the commission on behalf of the state in a civil action brought in the appropriate county or circuit court of the county in which venue may lie.

(4) Any person who, through misadventure, happenstance or otherwise causes damage to or destruction of state-owned lands or structures or other property thereon necessitating remedial or cleanup action shall be liable for

the cost of such remedial or cleanup action and the commission may recover the cost of same by a civil action brought in the circuit court of the county in which venue may lie. This penalty may be recovered in lieu of or in addition to the penalties provided in subsections (1), (2), (3) and (5) of this section.

(5) It shall be unlawful for any person to conduct unauthorized mineral exploration, development, or extraction activity or to violate the provisions of Section 29-7-3 or the rules and regulations of the commission which relate to mineral exploration, development, or extraction activity and, upon conviction thereof, such person shall be guilty of a misdemeanor, and fined not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00) for each offense. Each day on which such violation occurs or continues shall constitute a separate offense.

(6) In lieu of or in addition to the penalties prescribed hereinabove, any person convicted by a court of law or found guilty by the commission of unlawful mineral extraction activity on state-owned lands shall repay to the state the fair market value of the minerals unlawfully extracted.

(7) Proceedings before the commission on civil violations prescribed hereinabove shall be conducted in the manner set forth in this chapter.

HISTORY: Laws, 1982, ch. 455, § 2; Laws, 2000, ch. 516, § 8; Laws, 2004, ch. 482, § 3, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "of" was substituted for the word "on" so that "Department on Marine Resource" reads "Department of Marine Resources" everywhere it appears in the section. The Joint Committee ratified this correction at its August 5, 2008, meeting.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Law Reviews.

1982 Mississippi Supreme Court Review: Miscellaneous: Mineral Leasing of State-Owned Lands. 53 Miss. L. J. 199, March 1983.

§ 29-7-19. Hearings.

(1) The hearings, as provided under Section 29-7-21(1), may be conducted by the commission itself at a regular or special meeting of the commission, or the commission may designate a hearing officer, who may conduct such hearings in the name of the commission at any time and place as conditions and circumstances may warrant. The hearing officer shall have the record prepared of any hearing that he has conducted for the commission. The record shall be submitted to the commission along with that hearing officer's findings of fact and recommended decision. Upon receipt and review of the record of the hearing and the hearing officer's findings of fact and recommended decision, the commission shall render its decision in the matter. The decision shall become final after it is entered on the minutes and shall be considered the final

administrative agency decision on the matter. The decision may be appealed under Section 29-7-21(2).

(2) All hearings before the commission shall be recorded either by a court reporter, tape or mechanical recorders and subject to transcription upon order of the commission or any interested party, but if the request for transcription originates with an interested party, that party shall pay the cost thereof.

HISTORY: Laws, 2004, ch. 482, § 4, eff from and after July 1, 2004.

§ 29-7-21. Appeals.

(1) Any person or interested party aggrieved by any final rule, regulation, permit or order of the commission may file a petition with the commission within thirty (30) days after the final rule, regulation, permit or order is entered on the minutes. The petition shall set forth the grounds and reasons for the complaint and request a hearing of the matter involved. However, there shall be no hearing on the same subject matter that has previously been held before the commission or its designated hearing officer. The commission shall fix the time and place of the hearing and notify the petitioners thereof. In pending matters, the commission shall have the same powers as to subpoenaing witnesses, administering oaths, examining witnesses under oath and conducting the hearing, as is now vested by law in the Mississippi Public Service Commission, as to hearings before it, with the additional power that the executive director may issue all subpoenas, both at the instance of the petitioner and of the commission. At the hearings the petitioner, and any other interested party, may offer exhibits, present witnesses, and otherwise submit evidence, as the commission deems appropriate. After the hearing, the commission's decision shall be deemed the final administrative agency decision on the matter.

(2) Any interested person aggrieved by any final rule, regulation, permit or order of the commission issued under this section, regardless of the amount involved, may appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which shall be taken and perfected as hereinafter provided, within thirty (30) days from the date that the final rule, regulation or order is filed for record in the office of the commission. The chancery court may affirm the rule, regulation, permit, or order, or reverse the same for further proceedings as the court may require. All appeals shall be on the record, taken and perfected, heard and determined either in termtime or in vacation, including a transcript of pleadings and testimony, both oral and documentary, filed and heard before the commission, and the appeal shall be heard and disposed of promptly by the court as a preference cause. In perfecting any appeal provided by this section, the provisions of law respecting notice to the reporter and the allowance of bills of exception, now or hereafter in force respecting appeals from the chancery court to the Supreme Court, shall be applicable. However, the reporter shall transcribe his notes and file the transcript of the record with the board within thirty (30) days after approval of the appeal bond.

(3) Upon the filing with the commission of a petition for appeal to the Hinds County Chancery Court, it shall be the duty of the commission, as promptly as possible and within sixty (60) days after approval of the appeal bond, if required, to file with the clerk of the chancery court to which the appeal is taken, a copy of the petition for appeal and of the rule, regulation, permit or order appealed from, and the original and one (1) copy of the transcript of the record of proceedings in evidence before the commission. After the filing of the petition, the appeal shall be perfected by the filing with the clerk of the chancery court to which the appeal is taken of bond in the sum of Five Hundred Dollars ($500.00) with two (2) sureties or with a surety company qualified to do business in Mississippi as the surety, conditioned to pay the cost of the appeal; the bond to be approved by any member of the commission, or by the clerk of the court to which the appeal is taken. The perfection of an appeal shall not stay or suspend the operation of any rule, regulation, permit or order of the board, but the judge of the chancery court to which the appeal is taken may award a writ of supersedeas to any rule, regulation, permit or order of the commission after five (5) days' notice to the commission and after hearing. Any order or judgment staying the operation of any rule, regulation, permit or order of the commission shall contain a specific finding, based upon evidence submitted to the chancery judge and identified by reference thereto, that great or irreparable damage would result to the appellant if he is denied relief, and the stay shall not become effective until a supersedeas bond shall have been executed and filed with and approved by the clerk of the court or the chancery judge, payable to the state. The supersedeas bond shall be in an amount fixed by the chancery judge to protect the lessee or permittee from loss or damage from the stay and conditioned as the chancery judge may direct in the order granting the supersedeas. If the appeal is of a commission order concerning the lease of state lands for minerals, that appeal shall be given priority over other matters pending in the chancery court. If the appeal is of a commission permit, that appeal shall be given priority over other matters pending in chancery court.

HISTORY: Laws, 2004, ch. 482, § 5, eff from and after July 1, 2004.

CHAPTER 9.

INVENTORIES OF STATE PROPERTY

Sec.	
29-9-1.	Inventories to be made by heads of state agencies.
29-9-3.	Content.
29-9-5.	Execution and certification.
29-9-7.	Master inventory compiled.
29-9-9.	Disposal of obsolete or unnecessary property.
29-9-11.	Report of additions and deletions.
29-9-13.	Physical audit.
29-9-15.	Rules and regulations.
29-9-17.	Liability for failure to make inventory; recovery of value of missing items.
29-9-19.	Repealed.
29-9-21.	Complete and current records and reports.

§ 29-9-1. Inventories to be made by heads of state agencies.

The state auditor of public accounts shall require the heads of all state agencies to make an inventory of all lands, buildings, equipment, furniture, and other personal property owned by or under the control of the respective agencies, except highway rights of way owned or acquired by the Mississippi state highway commission. The inventories shall be made on forms to be prescribed and furnished by said state auditor. Agencies, including the legislature, which have on file proper inventories on August 8, 1968, shall not be required to make new inventories, but the remaining provisions of this chapter respecting inventories shall be applicable thereto.

HISTORY: Codes, 1942, § 3853-01; Laws, 1962, ch. 484, § 1; Laws, 1968, ch. 506, § 3, eff from and after passage (approved August 8, 1968).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — Inventory of state-owned building in areas of the state affected by Hurricane Katrina or flood plain areas, see § 29-13-5.

§ 29-9-3. Content.

The inventories herein required shall show the name, description, serial number, purchase or construction date, and the cost or purchase price of each article or piece of property, and any further information which the state auditor may require. A number shall be securely attached to each piece of furniture, equipment, or other property designated by the auditor not having a serial number, and the number shall be used in inventories as a serial number. Estimates may be used for purchase prices and dates on items purchased prior to January, 1946, provided records of same are not available.

HISTORY: Codes, 1942, § 3853-02; Laws, 1962, ch. 484, § 2, eff from and after July 1, 1962.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 29-9-5. Execution and certification.

Each inventory shall be executed in duplicate, the copy shall be retained by the maker for his files, and the original shall be delivered to the state auditor of public accounts. The original shall be certified by the heads of the respective institutions, departments, commissions, and agencies, or a responsible bonded property officer designated by him.

HISTORY: Codes, 1942, § 3853-03; Laws, 1962, ch. 484, § 3, eff from and after July 1, 1962.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 29-9-7. Master inventory compiled.

The auditor of public accounts shall compile or cause to be compiled from the inventories thus submitted to him one master inventory for the state as a whole, which shall be available for inspection to all state officials and newly elected or appointed officials who are about to take office.

HISTORY: Codes, 1942, § 3853-04; Laws, 1962, ch. 484, § 4, eff from and after July 1, 1962.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 29-9-9. Disposal of obsolete or unnecessary property.

(1) Whenever any vehicle, equipment, office furniture, office fixture or any other personal property which has been acquired or is owned by any institution, department or agency of the State of Mississippi becomes obsolete or is no longer needed or required for the use of such institution, department or agency, the same may be: (a) sold for cash, transferred, traded or exchanged for other property, furniture, equipment, fixture or vehicle needed by said institution, department or agency after having first obtained the written approval of the Governor's Office of General Services and the State Auditor or approval by the Legislative Budget Office if utilized under the jurisdiction of the Legislature; or (b) donated to any institution, department or agency of the State of Mississippi, or any political subdivision or local governing authority of the state. The singular shall include the plural. Transfers, trades, exchanges or donations made pursuant to this subsection may be made to any political subdivision or local governing authority of the State of Mississippi.

(2) The proceeds of all cash sales made, as authorized in this section, shall be paid over into the support and maintenance or contingent fund of the institution, department or agency as it deems best.

(3) The head of each state institution, department or agency shall be responsible and liable personally and on his official bond, in the amount of the value shown on the state inventory, for the disposal of any property contrary to the provisions of this section.

(4) The Office of General Services, on the approval of the Public Procurement Review Board, is hereby authorized and empowered to make reasonable rules and regulations and to require such information as may be necessary to carry out the purpose and provisions of this section.

(5) Any violation of the provisions hereof by any elected head of any institution, department, commission or agency of the State of Mississippi, or any appointee or employee of any institution, department, agency or commission coming under the provisions of this section, shall constitute a misdemeanor and, upon conviction therefor, shall be punished by a fine of not exceeding One Thousand Dollars ($1,000.00) in addition to personal and official liability, as hereinabove provided.

(6) The disposal of any unneeded personal property at the project described in Section 57-75-5(f)(vi), may be made in accordance with the provisions of the Mississippi Major Economic Impact Act by the Mississippi Major Economic Impact Authority, under such rules and regulations as may be adopted by such authority.

(7) The disposal of any alternative housing units purchased through the Mississippi Alternative Housing Pilot Program may be made by the Mississippi Emergency Management Agency as required by federal law to be in compliance with regulations of the federal articles of agreement and its awarded conditions, and upon approval of the Public Procurement Review Board.

HISTORY: Codes, 1942, § 4065.5; Laws, 1948, ch. 361, §§ 1-6; Laws, 1955, Ex

Sess ch. 25, §§ 1, 2; Laws, 1984, ch. 488, § 188; Laws, 1996, ch. 554, § 6; Laws, 1997, ch. 593, § 2; Laws, 2003, ch. 441, § 3; Laws, 2008, ch. 378, § 1, eff from and after passage (approved Mar. 31, 2008).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compliation, Revision and Publication of Legislation corrected a reference in subsection (6). The reference to "Section 57-75-5(f)(vii)" was changed to "Section 57-75-5(f)(vi)." The Joint Committee ratified the correction at its September 18, 2000, meeting.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 341, ch. 488, Laws of 1984, provides as follows:

SECTION 341. "Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References — Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Creation of the public procurement review board, see § 27-104-7.

Mississippi Emergency Management Agency, see § 33-15-7.

Mississippi Major Economic Impact Act generally, see §§ 57-75-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

All state institutions, departments and agencies may donate any of the personal property listed in Miss. Code section 29-9-9 to any one or more state institutions, departments or agencies or to any one or more state political subdivisions or local governing authorities. Pittman, Aug. 1, 1997, A.G. Op. #97-0463.

Regional housing authorities fall within the definition of "local governing authority" as used in this section, an entity to which property may be donated by a state agency. Shaifer, May 17, 1999, A.G. Op. #99-0255.

The Mississippi Emergency Management Agency may transfer manufactured home units, provided by the federal government after a hurricane for temporary housing, to Region 8 Mississippi Regional Housing Authority. Shaifer, May 17, 1999, A.G. Op. #99-0255.

A state agency may donate to other state agencies or to political subdivisions personal property that has become obsolete or is no longer needed or required for the use of the agency (modifying opinions to Bryant dated February 12, 1999 and to Osborne dated March 26, 1999). Bryant, June 9, 1999, A.G. Op. #99-0021.

§ 29-9-11. Report of additions and deletions.

On or before the fifteenth day of each month, the heads of all state agencies shall add to their inventory or inventories the items purchased or otherwise acquired during the last preceding month in the same manner as set forth in the original inventory, and indicate items that have been disposed of and that should be deleted therefrom, showing how and where disposals were made. Should there be no change in the inventory, a report shall be filed so indicating. This additional list and items to be deleted shall be submitted to the auditor of public accounts, to be used to add to or delete from the inventory or inventories in his office.

HISTORY: Codes, 1942, § 3853-05; Laws, 1962, ch. 484, § 5, eff from and after July 1, 1962.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 29-9-13. Physical audit.

Representatives of the State Auditor's office under the direction of the State Auditor, in making regular audits of the different state agencies, shall make a check or physical audit of the actual items or properties shown on their inventories and related records. Each state agency, the Secretary of the Senate, and the Clerk of the House of Representatives, when requested to do so, shall furnish a competent person or persons to assist in this check or physical audit. The auditor shall keep his records current at all times and shall report to the agency concerned and the general status of the inventory involved, on the completion of each audit.

HISTORY: Codes, 1942, § 3853-06; Laws, 1962, ch. 484, § 6; Laws, 1984, ch. 488, § 189; Laws, 2012, ch. 567, § 3; Laws, 2013, ch. 520, § 3, eff from and after July 1, 2013.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Heads of state institutions, departments or agencies responsible and personally liable for disposal of property contrary to the provisions of § 29-9-9, see § 29-9-9.

Provision that, in the event that a physical audit reveals that items which are included on an agency's inventory are missing or otherwise unaccounted for, the Executive Director of The Department of Finance and Administration is authorized to proceed to recover the value of the missing items, see § 29-9-17.

§ 29-9-15. Rules and regulations.

The auditor of public accounts, on approval of the attorney general, is hereby authorized and empowered to make reasonable rules and regulations and to require such additional information as may be necessary to carry out the provisions and purposes of the inventory requirements of this chapter.

HISTORY: Codes, 1942, § 3853-07; Laws, 1962, ch. 484, § 7, eff from and after July 1, 1962.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 29-9-17. Liability for failure to make inventory; recovery of value of missing items.

(1) If any officer or employee of any state agency shall refuse or fail to make any inventory or supplemental inventory thereto as required herein, or to do so in the manner prescribed by the State Auditor, the State Auditor shall proceed to make, or cause to be made, the inventory or supplemental inventory; and the expense thereof shall be personally borne by said officer or employee, and he shall be responsible on his official bond for the payment of the expense.

(2) In the event that an examination conducted pursuant to Section 29-9-13 finds items that are included on an agency's inventory which are missing and otherwise unaccounted for, the State Auditor has the authority to proceed under the provisions of Section 7-7-211 to recover the value of the missing items. The demand shall be made against the head of the agency, the agency's property officer and/or the appropriate officer or employee, if identified.

HISTORY: Codes, 1942, § 3853-08; Laws, 1962, ch. 484, § 8; Laws, 1986, ch. 488, § 7, eff from and after passage (approved April 15, 1986).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 29-9-19. Repealed.

Repealed by Laws, 2009, ch. 546, § 23, effective upon passage, April 15, 2009.

§ 29-9-19. [Codes, 1942, § 3853-09; Laws, 1962, ch. 484, § 9, eff from and after July 1, 1962.]

Editor's Notes — Former § 29-9-19 required the Director of the Agricultural Extension Service of Mississippi State University to report monthly to the State Auditor an inventory of horses, mules, cows and other livestock.

§ 29-9-21. Complete and current records and reports.

It is the purpose of this chapter to provide for more accurate, detailed, and readily available inventory information on all state property, said records to be maintained on machine equipment in the office of the auditor of public accounts. In carrying out the purpose hereof, it shall be the duty of the auditor to maintain his records complete and current and make such reports to the governor and the legislature whenever required, or when the said auditor, in his discretion, finds it necessary to make other and additional reports.

HISTORY: Codes, 1942, § 3853-10; Laws, 1962, ch. 484, § 11; Laws, 1984, ch. 488, § 190, eff from and after July 1, 1984.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

CHAPTER 11.

ENERGY CONSERVATION IN PUBLIC BUILDINGS [REPEALED]

Sec.
29-11-1 through 29-11-13. Repealed.

§§ 29-11-1 through 29-11-13. Repealed.

Repealed by Laws, 1978, ch. 523, § 8, from and after July 1, 1979.
§ 29-11-1. [En, Laws, 1978, ch. 523, § 1]
§ 29-11-3. [En, Laws, 1978, ch. 523, § 2]
§ 29-11-5. [En, Laws, 1978, ch. 523, § 3]
§ 29-11-7. [En, Laws, 1978, ch. 523, § 4]
§ 29-11-9. [En, Laws, 1978, ch. 523, § 5]
§ 29-11-11. [En, Laws, 1978, ch. 523, § 6]
§ 29-11-13. [En, Laws, 1978, ch. 523, § 7]

Editor's Notes — Former §§ 29-11-1 through 29-11-13 made provisions for conservation of energy in public buildings.

CHAPTER 13.

FLOOD INSURANCE FOR STATE-OWNED BUILDINGS

Sec.
29-13-1. Purchase of business property insurance and business personal property insurance on all state-owned buildings and contents thereof; participation in National Flood Insurance Program.
29-13-3. Filing claims; expenditures.
29-13-5. Inventory of state-owned buildings in flood plain areas.

§ 29-13-1. Purchase of business property insurance and business personal property insurance on all state-owned buildings and contents thereof; participation in National Flood Insurance Program.

(1) The Department of Finance and Administration ("department") shall purchase and maintain business property insurance and business personal property insurance on all state-owned buildings and/or contents as required by federal law and regulations of the Federal Emergency Management Agency (FEMA) as is necessary for receiving public assistance or reimbursement for repair, reconstruction, replacement or other damage to those buildings and/or contents caused by the Hurricane Katrina Disaster of 2005 or subsequent disasters. The department is authorized to expend funds from any available source for the purpose of obtaining and maintaining that property insurance. The department is authorized to enter into agreements with other state agencies, local school districts, community/junior college districts, state institutions of higher learning and community hospitals to pool their liabilities to participate in a group business property and/or business personal property insurance program, subject to uniform rules and regulations as may be adopted by the Department of Finance and Administration.

(2) The Department of Finance and Administration is required to purchase and maintain flood insurance under the National Flood Insurance Program (42 USCS, Section 4001 et seq.) as required by federal law on state-owned buildings and/or contents. To meet the requirements of participation in such program, the department is further required to adopt floodplain management criteria and procedures in accordance with the rules and regulations of 24 CFR, Chapter X, Subchapter B (National Flood Insurance Program), established by the United States Department of Housing and Urban Development pursuant to the National Flood Insurance Act of 1968 (Public Law 90-448) as amended and by the Flood Disaster Protection Act of 1973 (Public Law 93-234) as amended, and any supplemental changes to such rules and regulations. The department shall adopt the floodplain management criteria set forth in 24 CFR, Chapter X, Section 1910.3, on an emergency basis immediately upon May 3, 1979, and until such time as final regulations and criteria are developed by the department. Final regulations, criteria and procedures shall be implemented by the department within ninety (90) days

after May 3, 1979. Such criteria and procedures shall apply to any new construction or substantial improvement of state-owned buildings and other state-owned development located in floodplain areas as identified in conjunction with the National Flood Insurance Program. The department shall enforce the floodplain management criteria and procedures adopted by the department pursuant to this section.

(3) No state agency shall be authorized to expend any state, federal or special funds for the construction, renovation, repair or placement of any structure in a designated floodplain, floodway or coastal high hazard area, or to allow for the construction, renovation, repair or placement of any privately owned structure onto state-owned land in a designated floodplain, floodway or coastal high hazard area unless such agency has previously obtained the necessary permits required by the Department of Finance and Administration to comply with the regulations of the Federal Emergency Management Agency (FEMA), National Flood Insurance Program and the state's floodplain management regulations.

HISTORY: Laws, 1979, 1st Ex Sess. ch. 5, § 1; Laws, 1984, ch. 488, § 191; Laws, 1994, ch. 449, § 1; Laws, 2005, 5th Ex Sess, ch. 24, § 1, eff from and after passage (approved Oct. 24, 2005).

Editor's Notes — The administration of the National Flood Insurance Program was transferred from the U.S. Department of Housing and Urban Development to the Federal Emergency Management Agency (FEMA) in 1979, and the regulations in 24 CFR, Chapter X, Subchapter B were transferred and redesignated to 44 CFR, Chapter I, Subchapter B. The floodplain management criteria set forth in 24 CFR, Chapter X, Section 1910.3, which is referenced in subsection (2) of this section, has been transferred to 44 CFR, Chapter I, Section 60.3.

Cross References — Filing claims for damages under flood insurance policies, see § 29-13-3.

OPINIONS OF THE ATTORNEY GENERAL

Governmental entities constructing or improving structures within a city would have the same obligation to comply with the city's floodplain ordinance as they would the city's zoning ordinance and building codes. Mitchell, June 26, 2006, A.G. Op. 06-0219.

RESEARCH REFERENCES

ALR.

Damage within coverage of water damage insurance. 4 A.L.R.2d 532.

§ 29-13-3. Filing claims; expenditures.

The Department of Finance and Administration shall file any claims for damages covered under the Hurricane Katrina Disaster of 2005 or subsequent flood insurance policies purchased pursuant to Section 29-13-1. The proceeds of any such claim for damage to a state-owned building shall be paid to the Department of Finance and Administration and the State of Mississippi, which is authorized to expend such proceeds to repair or replace such damaged building.

HISTORY: Laws, 1979, 1st Ex Sess. ch. 5, § 2; Laws, 1984, ch. 488, § 192; Laws, 1992, ch. 396, § 1; Laws, 2005, 5th Ex Sess, ch. 24, § 2, eff from and after passage (approved Oct. 24, 2005).

§ 29-13-5. Inventory of state-owned buildings in flood plain areas.

The Department of Finance and Administration shall compile an inventory of all state-owned buildings in any area of the state affected by the Hurricane Katrina Disaster of 2005 or any floodplain areas and any necessary data concerning such buildings. Each agency, board, commission, department and institution of the state shall cooperate in the preparation of the inventory and shall submit any information required by the department in a timely manner which will allow the inventory to be finalized and presented to the appropriate federal and state agencies. Such information shall include the specific location and, where available, the elevation of all state-owned buildings under the jurisdiction of the agency, board, commission, department or institution in any hurricane hazard or floodplain areas.

HISTORY: Laws, 1979, 1st Ex Sess. ch. 5, § 3; Laws, 2005, 5th Ex Sess, ch. 24, § 3, eff from and after passage (approved Oct. 24, 2005).

CHAPTER 15.

PUBLIC TRUST TIDELANDS

Sec.	
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29-15-23.	Establishment of local tidal datums and determination of mean high and low water lines; responsibility; methods.

§ 29-15-1. Definitions.

(a) "Commission" means the Mississippi Commission on Marine Resources.

(b) "Local tidal datum" means the datum established for a specific tide station through the use of tidal observations made at that station.

(c) "Mean high water" means the arithmetic mean of all the high waters occurring in a particular nineteen-year tidal epoch period; or for a shorter period of time after corrections are applied to the short term observations to reduce these values to the equivalent nineteen-year value.

(d) "Mean high water line" means the intersection of the tidal datum plane of mean high water with the shore.

(e) "Mean high water survey" means a survey of the intersection of the shoreline with the tidal datum plane of mean high water using local tidal datums and surveying methodologies approved by the commission. Methodologies shall include but not be limited to the "staking method," "the topographic method" and "tide coordinated aerial photography."

(f) "National map accuracy standards" means a set of guidelines published by the Office of Management and Budget of the United States to which maps produced by the United States government adhere.

(g) "Submerged lands" means lands which remain covered by waters, where the tides ebb and flow, at ordinary low tides.

(h) "Tidelands" means those lands which are daily covered and uncovered by water by the action of the tides, up to the mean line of the ordinary high tides.

HISTORY: Laws, 1989, ch. 495, § 2; Laws, 1994, ch. 578, § 52, eff from and after July 1, 1994.

Editor's Notes — Laws of 1989, ch. 495, § 1, effective from and after March 31, 1989, provides as follows:

"SECTION 1. The Legislature finds that certainty and stability of the land titles of riparian and littoral property owners along the banks of the navigable rivers and waterways on the borders and in the interior of the state and along the shores of the tidally affected waters of the state are essential to the economic welfare of the state and to the peace, tranquility and financial security of the many thousands of citizens who own such lands; that a dispute has developed with respect to such lands bordering on tidally affected waters, calling into question titles and legal issues believed secure and determined from the date of statehood; that this dispute has cast a doubt and cloud over the titles to all littoral lands and all riparian lands along the rivers and shorelines of the coastal area to such a degree that land sales are being prevented, business and home purchasing has been made difficult or impossible, industrial financing based on such titles has become unavailable, and homeowners and other owners have been rendered apprehensive as to their security in their ownership. Economic growth and development in the coastal counties is at a virtual standstill, creating a constantly increasing and incalculable loss of dollars to the area as well as the loss of countless new jobs for the average citizens of our state. The Legislature finds that this dispute has already caused extensive harm, is intolerable, and immediate resolution is required and would serve the higher public purpose, in order that public trust tidelands and submerged lands may be utilized through their normal interface with the fast lands in furtherance of all the usual purposes of the trust.

"The Legislature recognizes that it serves the interests of all the citizens of the state as well as the interests of each individual area and that when controversies and problems arise between divergent interests it becomes the duty and responsibility of the Legislature to balance these interests and reach equitable solutions which will create the least amount of harm to the individual citizens and the state as a whole. The Legislature finds, in accordance with justice and sound policy, that resolving these problems in the manner herein set out would create far less harm and be of greater benefit to the state and its citizens in terms of preventing economic loss, loss of jobs, loss of development, use and enjoyment of the tidelands and submerged lands, loss of industry and loss of revenue to the state than any benefits which would be derived from any attempt to completely rectify unregulated wetlands use which has occurred in the past, that the amount of damage, harm or loss that has occurred to the lands held in public trust since statehood is negligible compared to the benefit of resolving the problem, that the cost of any other solution is far in excess of the amount of public gain."

Cross References — Public trust tidelands exempt from ad valorem taxation, see § 27-31-39.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Constitutionality.

1. In general.

Landowners' inverse condemnation claim against the State of Mississippi did not fail as a matter of law due to the land in question being public trust tidelands because there was a factual dispute as to the boundary of the public trust tidelands, which a jury resolved. State v. Murphy, 202 So. 3d 1243, 2016 Miss. LEXIS 446 (Miss. 2016).

The 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23) did not constitute a donation of public trust property in violation of § 95 of the Mississippi Constitution, but rather was a unified attempt by the Legislature to resolve the discord existing between the State and area landowners; an unconstitutional donation should not survive the statutory process for determining the line of demarcation between the public trust lands and that of private property owners since the common law of Mississippi pertaining to tidelands, submerged lands, and riparian and littoral rights would be applied. Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

The 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23) was not local or private legislation in violation of §§ 87 and 90(u) of the Mississippi Constitution, but, rather, was a general law because it would be applied to all members of the class of persons whose lands bordered tidelands, and was an effort to manage and protect the public trust lands for the benefit of every citizen of the State. Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

The 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23), which was an attempt to establish an appropriate mean high tide line as the boundary of public trust lands, did not donate public trust lands to private parties in violation of the State's duty as trustee, because it was a legislative effort to deal with problems in regard to public land ownership, and therefore resulted from a legislative enactment for a "higher public purpose." Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

The 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23) did not violate the separation of powers doctrine in Article 1, § 2 of the Mississippi Constitution by granting the Secretary of State, as a member of the executive branch, discretion in drawing and revising the preliminary tideland boundary map, in spite of the argument that the discretion afforded him in drawing the final boundary map gave him the authority to convey public trust lands which could otherwise be conveyed only by legislative enactment, since his discretion was limited to comments and/or documentation regarding the preliminary map submitted within a 60-day period, and any disagreements or discrepancies resulting from the preliminary map could be either negotiated or brought to trial; the Act did not give the Secretary of State the power or authority to make laws, but rather it provided that he be used as a tool in the implementation of the Act. Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

The 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23) did not violate the constitutional principles of separation of powers in Article 1, § 2 or Article 4, §§ 144, 159, and 160 of the Mississippi Constitution by allowing the Secretary of State, as a member of the executive branch, discretion in drawing and revising the preliminary tideland boundary map, in spite of the argument that the granting of such discretion was an encroachment upon the judicial branch because it created an alternative method of quieting title and removing clouds, since the power granted the Secretary of State was not the power to quiet title or remove clouds, but the power to establish the boundary line between public trust lands and private property, and there was nothing in the Act indicating that the Secretary of State would exercise power granted to the judicial branch; moreover, the boundary line which would be determined by the Secretary of State would be subject to judicial review, since disgruntled landowners would have the opportunity to seek adjudication in the courts which would apply both common law and case law interpretations dealing with tidelands. Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

2. Constitutionality.

The mere fact that the discretion granted to the Secretary of State in the

Public Trust Tidelands Act could be interpreted in different lights, does not automatically render it vague; the procedure established by the tidelands legislation has a reasonable relation to the governmental purpose of establishing the boundary of public trust lands and as such is not vague. Columbia Land Dev., LLC v. Sec'y of State, 868 So. 2d 1006, 2004 Miss. LEXIS 286 (Miss. 2004).

OPINIONS OF THE ATTORNEY GENERAL

The Secretary of State has the authority to require the City of Long Beach and the Long Beach Port Commission to enter into a tidelands lease for water bottoms located within the commission harbor. Grisson, July 27, 1999, A.G. Op. #99-0253.

§ 29-15-3. Declaration of public policy and purpose.

(1) It is declared to be the public policy of this state to favor the preservation of the natural state of the public trust tidelands and their ecosystems and to prevent the despoliation and destruction of them, except where a specific alteration of specific public trust tidelands would serve a higher public interest in compliance with the public purposes of the public trust in which such tidelands are held.

(2) It is hereby declared to be a higher public purpose of this state and the public tidelands trust to resolve the uncertainty and disputes which have arisen as to the location of the boundary between the state's public trust tidelands and the upland property and to confirm the mean high water boundary line as determined by the Mississippi Supreme Court, the laws of this state and this chapter.

HISTORY: Laws, 1989, ch. 495, § 3, eff from and after passage (approved March 31, 1989).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Duty of Secretary of State.

1. In general.

Landowners' inverse condemnation claim against the State of Mississippi did not fail as a matter of law due to the land in question being public trust tidelands because there was a factual dispute as to the boundary of the public trust tidelands, which a jury resolved. State v. Murphy, 202 So. 3d 1243, 2016 Miss. LEXIS 446 (Miss. 2016).

Trial court erred in ruling in favor of the State regarding a dispute over land under Miss. Code Ann. § 29-15-7 consisting of artificial accretions on which appellants had built a hotel because the state failed to prove by a preponderance of the evidence that the accretions above the high water line were not done pursuant to a constitutional legislative enactment and for a higher public purpose under Miss. Code Ann. § 49-27-3 and Miss. Code Ann. § 29-15-3(1). Bayview Land, Ltd. v. State, 950 So. 2d 966, 2006 Miss. LEXIS 546 (Miss. 2006).

The 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23) did not constitute a donation of public trust property in violation of § 95 of the Mississippi Constitution, but rather was a unified attempt by the Legislature to resolve the discord existing between the State and area landowners; an unconstitutional donation should not survive the statutory process for determining the line of demarcation between the public trust lands and that of private property owners since the common law of Mississippi pertaining to tidelands, submerged lands, and riparian and littoral rights would be applied. Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

The 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23) was not local or private legislation in violation of §§ 87 and 90(u) of the Mississippi Constitution, but, rather, was a general law because it would be applied to all members of the class of persons whose lands bordered tidelands, and was an effort to manage and protect the public trust lands for the benefit of every citizen of the State. Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

The 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23), which was an attempt to establish an appropriate mean high tide line as the boundary of public trust lands, did not donate public trust lands to private parties in violation of the State's duty as trustee, because it was a legislative effort to deal with problems in regard to public land ownership, and therefore resulted from a legislative enactment for a "higher public purpose." Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

2. Duty of Secretary of State.

It is the Secretary of State's constitutional duty to exercise discretion in a manner consistent with the public policy as stated in the Public Trust Tidelands Act, Miss. Code Ann. § 29-15-3. Columbia Land Dev., LLC v. Sec'y of State, 868 So. 2d 1006, 2004 Miss. LEXIS 286 (Miss. 2004).

RESEARCH REFERENCES

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

§ 29-15-5. Tidelands and submerged lands held in public trust; rights of littoral and riparian property owners.

(1) Tidelands and submerged lands are held by the state in trust for use of all the people, and are so held in their character as the beds and shores of the sea and its tidally affected arms and tributaries for the purposes defined by common law and statutory law. Littoral and riparian property owners have common law and statutory rights under the Coastal Wetlands Protection Law which extend into the waters and beyond the low tide line, and the state's responsibilities as trustee extends to such owners as well as to the other members of the public.

(2) Residential property owners shall not be required to obtain a tidelands lease for exercising their common law and statutory littoral and riparian rights.

HISTORY: Laws, 1989, ch. 495, § 4; Laws, 2012, ch. 403, § 1, eff from and after passage (approved Apr. 18, 2012).

Cross References — "Submerged lands" and "tidelands" defined, see § 29-15-1.
Coastal Wetlands Protection Law, see § 49-27-1 et seq.

JUDICIAL DECISIONS

1. In general.

Landowners' inverse condemnation claim against the State of Mississippi did not fail as a matter of law due to the land in question being public trust tidelands because there was a factual dispute as to the boundary of the public trust tidelands, which a jury resolved. State v. Murphy, 202 So. 3d 1243, 2016 Miss. LEXIS 446 (Miss. 2016).

RESEARCH REFERENCES

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

§ 29-15-7. Map of public trust tidelands; boundary challenges.

(1) The Secretary of State, in cooperation with other state agencies, shall prepare a Preliminary Map of Public Trust Tidelands. The preliminary map shall depict the boundary as the current mean high water line where shoreline is undeveloped and in developed areas or where there have been encroachments, such maps shall depict the boundary as the determinable mean high water line nearest the effective date of the Coastal Wetlands Protection Act.

(2) The state recognizes that the boundary of the public trust tidelands is ambulatory and that the natural inland expansion of tide waters over land not previously subject to the ebb and flow of the tide increases the land subject to the public trust, while natural accretion, the gradual and imperceptible accumulation of land by natural causes, and natural reliction, the increase of land by permanent withdrawal or retrocession of tidal waters by natural causes, diminish the land subject to the public trust and increase the property owned by the contiguous upland owner. Likewise, the state recognizes the common law doctrine as it pertains to such tidelands, submerged lands and riparian and littoral rights and declares such to be the law of this state.

(3) The preliminary map shall be transmitted to each of the chancery clerks of the coastal counties, and each chancery clerk shall post such map in a public place in his office. The Secretary of State shall also cause to be published in a newspaper of general circulation within each coastal county a notice announcing that a copy of the Preliminary Map of Public Trust Tidelands is available for public inspection at the office of the chancery clerk of that county, and shall post a similar notice in at least three (3) public places in each coastal county in this state. The preliminary map shall also be open to public inspection at the office of the Secretary of State.

(4) The Secretary of State shall allow sixty (60) days after publication of the preliminary map for submission of comments and/or additional documentation and may, at his discretion, revise the map accordingly. Within twenty (20) days of the completion of the period for submission of comments, the Secretary of State shall have incorporated any revisions to the Preliminary Map of Public Trust Tidelands and certify its final adoption. The certified map

as finally adopted shall be published as provided hereinabove. The final certified map shall be duly recorded in the land records of the chancery clerks office in Hancock, Harrison and Jackson Counties. Upon recordation, the certified map shall be final to those properties not subject to the trust. The Secretary of State shall issue to all consenting property owners a certificate stating that the described property does not lie within the boundary of the public trust tidelands and is not subject to the trust. The Secretary of State shall duly file such certificates with the proper chancery clerks office for recordation. In addition, the certified map shall be placed in the Secretary of State's permanent register which shall be open to public inspection. Within one hundred twenty (120) days of final adoption of the certified map, the Secretary of State shall determine those property owners whose lands are subject of the public trust and are in violation of such trust. The Secretary of State shall notify all such owners by certified mail and shall include an explanation of the procedure available to the occupant to resolve any dispute with respect to this map. The notice shall also inform occupants that after three (3) years the boundary as set forth in the certified map shall become final unless the occupant has submitted a contrary claim to the office of the Secretary of State. Such property owner shall have six (6) months to negotiate and settle differences with the Secretary of State. The Secretary of State may allow extensions at his discretion. A boundary determination shall be final upon agreement of the Secretary of State and the owner and an instrument setting forth the boundary agreement shall be duly executed and recorded in the chancery court where the property is located. Any such boundary agreement shall be binding on the state and other parties thereto.

(5) If any dispute as to the location of the boundary of the public trust cannot be negotiated and settled between the affected property owners and the Secretary of State within six (6) months after notice by the state of its claim, either the state or a person claiming an interest in the property may apply to the chancery court of the county in which the property is located for a resolution of the dispute and a determination of the location of the boundary. All persons having an interest in the property subject to the dispute shall be made a party to such proceeding. In any such action, the state shall have the burden of proof by a preponderance of evidence that any such land is subject to the trust.

(6) Nothing in this section is intended to preclude any party from pursuing remedies otherwise available at law, including but not limited to those provided in Sections 11-17-1 et seq., except that if no action is taken by the occupant within three (3) years of receipt of notice as described above, the boundary as determined by the certified map shall become final.

HISTORY: Laws, 1989, ch. 495, § 5, eff from and after passage (approved March 31, 1989).

Cross References — Public trust tidelands exempt from ad valorem taxation, see § 27-31-39.

"Mean high water" and "tidelands" defined, see § 29-15-1.

Commission on Marine Resources to conduct boundary mapping program; additional powers of Bureau, see § 29-15-17.

Maps produced under this section to conform to minimal national map accuracy standards, see § 29-15-19.

Coastal Wetlands Protection Law, see § 49-27-1 et seq.

JUDICIAL DECISIONS

1. In general.

Chancellor correctly determined that the question of whether or not East Beach was natural or artificial controlled the legal dispute as to the boundary of the tidelands. Ample evidence supported the chancellor's determination that no natural beach existed on the shoreline prior to the construction of East Beach. Harris v. State, 256 So. 3d 574, 2018 Miss. LEXIS 442 (Miss. 2018).

Landowners' inverse condemnation claim against the State of Mississippi did not fail as a matter of law due to the land in question being public trust tidelands because there was a factual dispute as to the boundary of the public trust tidelands, which a jury resolved. State v. Murphy, 202 So. 3d 1243, 2016 Miss. LEXIS 446 (Miss. 2016).

Trial court erred in granting partial summary judgment to the landowners in the action to confirm title to a sand beach because the State created genuine factual issues by producing evidence that the 1973 high water line, created pursuant to the Public Trust Tidelands Act of 1989, supported the conclusion that the beach was constructed by filling in tidelands and the landowners failed to show that there were no material issues of fact to be determined. Hosemann v. Harris, 163 So. 3d 263, 2015 Miss. LEXIS 160 (Miss. 2015).

Trial court erred in ruling in favor of the State regarding a dispute over land under Miss. Code Ann. § 29-15-7 consisting of artificial accretions on which appellants had built a hotel because the state failed to prove by a preponderance of the evidence that the accretions above the high water line were not done pursuant to a constitutional legislative enactment and for a higher public purpose under Miss. Code Ann. § 49-27-3 and Miss. Code Ann. § 29-15-3(1). Bayview Land, Ltd. v. State, 950 So. 2d 966, 2006 Miss. LEXIS 546 (Miss. 2006).

The 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23) did not constitute a donation of public trust property in violation of § 95 of the Mississippi Constitution, but rather was a unified attempt by the Legislature to resolve the discord existing between the State and area landowners; an unconstitutional donation should not survive the statutory process for determining the line of demarcation between the public trust lands and that of private property owners since the common law of Mississippi pertaining to tidelands, submerged lands, and riparian and littoral rights would be applied. Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

Under the 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23), the use of the July 1, 1973 date (the effective date of the Coastal Wetlands Protection Act) was a "starting point" in ascertaining the mean high water line in developed areas, and was not a mandatory bench mark; the preliminary map would be drawn as it existed on July 1, 1973, and all interested parties, including adjacent landowners, the public, and the Secretary of State, would have 60 days to submit comments which could be used to adjust the final map, which was not required to include or exclude any lands which had been artificially filled prior to 1973. Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

The discretion granted the Secretary of State by § 29-15-7 was not unconstitutionally vague in violation of the Fourteenth Amendment to the United States Constitution and Article 3, § 14 of the Mississippi Constitution, since the procedure established by the tidelands legislation had a reasonable relation to the governmental purpose of establishing the boundary of public trust lands; the mere fact that the discretion granted the Secretary of State could be interpreted in different lights did not automatically render it vague. Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

The 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23) did not violate the separation of powers doctrine in Article 1, § 2 of the Mississippi Constitution by granting the Secretary of State, as a member of the executive branch, discretion in drawing and revising the preliminary tideland boundary map, in spite of the argument that the discretion afforded him in drawing the final boundary map gave him the authority to convey public trust lands which could otherwise be conveyed only by legislative enactment, since his discretion was limited to comments and/or documentation regarding the preliminary map submitted within a 60-day period, and any disagreements or discrepancies resulting from the preliminary map could be either negotiated or brought to trial; the Act did not give the Secretary of State the power or authority to make laws, but rather it provided that he be used as a tool in the implementation of the Act. Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

The 1989 Public Trust Tidelands Act (§§ 29-15-1 through 29-15-23) did not violate the constitutional principles of separation of powers in Article 1, § 2 or Article 4, §§ 144, 159, and 160 of the Mississippi Constitution by allowing the Secretary of State, as a member of the executive branch, discretion in drawing and revising the preliminary tideland boundary map, in spite of the argument that the granting of such discretion was an encroachment upon the judicial branch because it created an alternative method of quieting title and removing clouds, since the power granted the Secretary of State was not the power to quiet title or remove clouds, but the power to establish the boundary line between public trust lands and private property, and there was nothing in the Act indicating that the Secretary of State would exercise power granted to the judicial branch; moreover, the boundary line which would be determined by the Secretary of State would be subject to judicial review, since disgruntled landowners would have the opportunity to seek adjudication in the courts which would apply both common law and case law interpretations dealing with tidelands. Secretary of State v. Wiesenberg, 633 So. 2d 983, 1994 Miss. LEXIS 36 (Miss. 1994).

RESEARCH REFERENCES

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

§ 29-15-9. Public Trust Tidelands Fund; distribution of funds derived from lease rentals of tidelands and submerged lands; disbursement of funds appropriated as separate line items in appropriation bill.

(1) There is created in the State Treasury a special fund to be known as the "Public Trust Tidelands Fund." The fund shall be administered by the Secretary of State as trustee.

(2) Any funds derived from lease rentals of tidelands and submerged lands, except those funds derived from mineral leases, or funds previously specifically designated to be applied to other agencies, shall be transferred to the special fund. However, funds derived from lease rentals may be used to cover the administrative cost incurred by the Secretary of State. Any remaining funds derived from lease rentals shall be disbursed pro rata to the local

taxing authorities for the replacement of lost ad valorem taxes, if any. Then, any remaining funds shall be disbursed to the commission for new and extra programs of tidelands management, such as conservation, reclamation, preservation, acquisition, education or the enhancement of public access to the public trust tidelands or public improvement projects as they relate to those lands.

(3) Any funds that are appropriated as separate line items in an appropriation bill for tideland programs or projects authorized under this section for political subdivisions or other agencies shall be disbursed as provided in this subsection.

(a) The Department of Marine Resources shall make progress payments in installments based on the work completed and material used in the performance of a tidelands project only after receiving written verification from the political subdivision or agency. The political subdivision or agency shall submit verification of the work completed or materials in such detail and form that the department may require.

(b) The Department of Marine Resources shall make funds available for the purpose of using such funds as a match or leverage for federal or other funds that are available for the designated tidelands project.

HISTORY: Laws, 1989, ch. 495, § 6; Laws, 1994, ch. 578, § 53; Laws, 2002, ch. 474, § 1, eff from and after passage (approved Mar. 27, 2002).

Cross References — Provisions for leasing or renting surface and submerged land belonging to the State, see § 29-1-107.

"Submerged lands" and "tidelands" defined, see § 29-15-1.

RESEARCH REFERENCES

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

§ 29-15-10. Public Trust Tidelands Assessments Fund; purpose of fund; distribution of funds derived from certain assessments on gaming licensees; disbursement of funds appropriated as separate line items in an appropriation bill.

(1) There is created in the State Treasury a special fund to be known as the "Public Trust Tidelands Assessments Fund." The purpose of the fund is to ensure that monies derived from the public trust tidelands assessments shall be used for the benefit of preserving and protecting the tidelands and submerged lands found within the three (3) most southern counties of the state. One (1) specific purpose of the fund is to ensure that the annual payment made by the state for the purchase of Deer Island shall continue uninterrupted until the purchase transaction is completed. The fund shall be administered by

the Secretary of State, as trustee. None of the funds that are in the special fund or that are required to be deposited into the special fund shall be transferred, diverted or in any other manner expended or used for any purpose other than those purposes specified in this section.

(2)(a) Any funds derived from assessments made pursuant to Section 29-1-107(4)(c) shall be deposited into the special fund.

(b) Funds paid pursuant to paragraph (a) of this subsection may be appropriated by the Legislature in an amount necessary to cover the administrative cost incurred by the Mississippi Commission on Marine Resources. Any remaining funds shall be disbursed by the commission for new and extra programs of tidelands management, such as conservation, reclamation, preservation, acquisition, education or the enhancement of public access to the public trust tidelands or public improvement projects as they relate to those lands.

(3) Any funds that are appropriated as separate line items in an appropriation bill for tideland programs or projects authorized under this section for political subdivisions or other agencies shall be disbursed as provided in this subsection.

(a) The Department of Marine Resources shall make progress payments in installments based on the work completed and material used in the performance of a tidelands project only after receiving written verification from the political subdivision or agency. The political subdivision or agency shall submit verification of the work completed or materials in such detail and form that the department may require.

(b) The Department of Marine Resources shall make funds available for the purpose of using such funds as a match or leverage for federal or other funds that are available for the designated tidelands project.

HISTORY: Laws, 2005, 5th Ex Sess, ch. 15, § 2, eff from and after passage (approved Oct. 17, 2005).

§ 29-15-11. Lessee of tidelands or submerged lands responsible for tax levy on leasehold interest.

Upon the proper authorized leasing of any state public trust tidelands, or submerged lands, the lessee shall be responsible for any county or municipal tax levy upon the leasehold interest.

HISTORY: Laws, 1989, ch. 495, § 7, eff from and after passage (approved March 31, 1989).

Cross References — Public trust tidelands exempt from ad valorem taxation, see § 27-31-39.

"Submerged lands" and "tidelands" defined, see § 29-15-1.

RESEARCH REFERENCES

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

§ 29-15-13. Exemptions from any use or rental fees.

All public projects of any federal, state or local governmental entity which serve a higher public purpose of promoting the conservation, reclamation, preservation of the tidelands and submerged lands, public use for fishing, recreation or navigation, or the enhancement of public access to such lands shall be exempt from any use or rental fees.

HISTORY: Laws, 1989, ch. 495, § 9, eff from and after passage (approved March 31, 1989).

Cross References — "Submerged lands" and "tidelands" defined, see § 29-15-1.

RESEARCH REFERENCES

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

§ 29-15-15. State public trust tidelands mapping program declared to be in public interest.

The Legislature hereby declares that accurate maps of coastal areas are required for many public purposes, and a state public trust tidelands mapping program establishing uniform standards and procedures is declared to be in the public interest.

HISTORY: Laws, 1989, ch. 495, § 10, eff from and after passage (approved March 31, 1989).

RESEARCH REFERENCES

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

§ 29-15-17. Commission to conduct boundary mapping program; additional powers of Commission.

(1) After the preparation and publication of the certified preliminary map,

as finally adopted and provided for in Section 29-15-7, the commission is authorized and directed to conduct a comprehensive program of public trust tidelands boundary mapping with the object of providing accurate surveys of such lands of the state.

(2) In addition to other such powers as may be specifically delegated to it, the commission is authorized to perform the following functions:

(a) To coordinate the efforts of all public and private agencies and organizations engaged in the making of tidal surveys and maps of the coastal areas of this state, with the object of avoiding unnecessary duplication and overlapping;

(b) To serve as a coordinating state agency for any program of tidal surveying and mapping conducted by the federal government;

(c) To assist any court, tribunal, administrative agency or political subdivision, and to make available to them information regarding tidal surveying and coastal boundary determinations;

(d) To contract with federal, state or local agencies or with private parties for the performance of any surveys, studies, investigations or mapping activities, for preparation and publication of the results thereof, or for other authorized functions relating to the objectives of this part;

(e) To develop permanent records of tidal surveys and maps of the state's coastal areas;

(f) To develop uniform specifications and regulations for tidal surveying and mapping coastal areas of the state;

(g) To collect and preserve appropriate survey data from coastal areas; and

(h) To act as a public repository for copies of coastal area maps and to establish a library of such maps and charts.

HISTORY: Laws, 1989, ch. 495, § 11; Laws, 1994, ch. 578, § 54, eff from and after July 1, 1994.

Cross References — Maps produced under this section to conform to minimal national map accuracy standards, see § 29-15-19.

RESEARCH REFERENCES

ALR.

Liability of United States, under Federal Tort Claims Act (28 U.S.C.S. §§ 1346(b), 2671 et seq.) or Suits in Admiralty Act (46 App. U.S.C.S. §§ 741 et seq.), for injuries or damages arising from issuance, preparation, or distribution of charts, maps, or like navigational aids. 164 A.L.R. Fed. 541.

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

§ 29-15-19. Maps to conform to minimal national map accuracy standards.

All maps produced under this program shall conform at least to minimal national map accuracy standards.

HISTORY: Laws, 1989, ch. 495, § 12, eff from and after passage (approved March 31, 1989).

Cross References — National map accuracy standards defined, see § 29-15-1.

RESEARCH REFERENCES

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

§ 29-15-21. Establishment of local tidal datums and determination of mean high and low water lines; standards.

The establishment of local tidal datums and the determination of the location of the mean high water line or the mean low water line, whether by federal, state or local agencies or private parties, shall be made in accordance with the standards and procedures set forth in this chapter, and in accordance with supplementary regulations promulgated by the commission.

HISTORY: Laws, 1989, ch. 495, § 13; Laws, 1994, ch. 578, § 55, eff from and after July 1, 1994.

Cross References — "Local tidal datum," "mean high water" and "mean low water" defined, see § 29-15-1.

RESEARCH REFERENCES

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

§ 29-15-23. Establishment of local tidal datums and determination of mean high and low water lines; responsibility; methods.

(1) The establishment of local tidal datums and the determination of the location of the mean high water line or the mean low water line shall be performed by qualified personnel licensed by the Board of Professional Land Surveyors or by representatives of the United States Government when approved by the commission.

(2) The location of the mean high water line or the mean low water line shall be determined by methods which are approved by the commission for the area concerned.

HISTORY: Laws, 1989, ch. 495, § 14; Laws, 1994, ch. 578, § 56, eff from and after July 1, 1994.

Cross References — "Local tidal datum," "mean high water" and "mean low water" defined, see § 29-15-1.

RESEARCH REFERENCES

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

CHAPTER 17.

STATE AGENCY REPAIR AND RENOVATION

Sec.
29-17-4. State Agency Repair and Renovation Fund.

Editor's Notes — Chapter 581, Laws of 1990, was a state bond bill that should have been excluded but was erroneously codified as Sections 29-17-1, 29-17-3 and 29-17-5 through 29-17-35. Those sections have been removed from the Code at the direction of the Co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Two sections of the chapter, Sections 29-17-1 (Former § 29-17-1. [Laws, 1990, ch. 581, § 1; Laws, 2001, ch. 325, § 3; Laws, 2004, ch. 301, § 6, eff from and after passage (approved Feb. 20, 2004).]) and 29-17-3 (Former § 29-17-3. [Laws, 1990, ch. 581, § 2; Laws, 1993, ch. 608, § 1; Laws, 2014, ch. 397, § 7, eff July 1, 2014).], were amended after 1990.

Section 29-17-4 was later added by Laws of 1999, Ch. 334, § 3, and has been retained in Chapter 17 of Title 29.

§ 29-17-4. State Agency Repair and Renovation Fund.

There is hereby created in the State Treasury a special fund to be designated as the "State Agency Repair and Renovation Fund" which shall consist of monies appropriated or otherwise made available therefor by the Legislature. Interest earned on monies in the special fund shall be deposited to the credit of such fund and money shall not lapse at the end of the fiscal year into the State General Fund. Money in the special fund shall be appropriated by the Legislature and allocated by the Bureau of Building, Grounds and Real Property Management, Department of Finance and Administration, for the repair, renovation and improvement of existing facilities owned by the State of Mississippi, except for those facilities under the control of the institutions of higher learning and those facilities owned by the community and junior colleges. Such repair, renovation and improvements shall include utility infrastructure projects; heating, ventilation and air conditioning systems; and the replacement of furniture and equipment owned by the State of Mississippi. However, the cost of such repair, renovation and improvement for any one project shall not exceed One Million Dollars ($1,000,000.00). For the purposes of this section, the term "furniture and equipment" shall be limited to the types of furniture and equipment items previously recorded in the agency's inventory.

HISTORY: Laws, 1999, ch. 334, § 3, eff from and after passage (approved Mar. 12, 1999).

Cross References — Bureau of building, ground, and real property generally, see §§ 31-11-1 et seq.

Community College Repair and Renovation Fund, see § 37-29-268.

Institutions of Higher Learning Repair and Renovation Fund, see § 37-101-81.

TITLE 31.

PUBLIC BUSINESS, BONDS AND OBLIGATIONS

Chapter 1. General Provisions Relative to Public Contracts. 31-1-1
Chapter 3. State Board of Public Contractors. 31-3-1
Chapter 5. Public Works Contracts. 31-5-1
Chapter 7. Public Purchases. 31-7-1
Chapter 8. Acquisition of Public Buildings, Facilities, and Equipment Through Rental Contracts. 31-8-1
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CHAPTER 1.

GENERAL PROVISIONS RELATIVE TO PUBLIC CONTRACTS

Sec.
31-1-1. Contracts for printing, binding, etc.
31-1-2. Repealed.
31-1-3. Duties vested in Secretary of State.
31-1-5. Kinds of paper to be used.
31-1-7. Kinds of type to be used.
31-1-9. Binding.
31-1-11. Contents of page.
31-1-13. No extra charge for collating.
31-1-15. Number to be printed.
31-1-17. Printing schedule.
31-1-19. Labeling.
31-1-21. Contractor's accounts.
31-1-23. Department to read proof.
31-1-25. Printing, binding, and stationery.
31-1-27. Certain appraisal records exempt from requirement of public access.

§ 31-1-1. Contracts for printing, binding, etc.

The responsibility for the making of contracts for printing, binding, engraving and lithographing is hereby vested in each state agency or office which requires such printing, binding, engraving and lithographing, including but not restricted to the Secretary of State, State Department of Education, State Tax Commission, Supreme Court, Department of Insurance, State Auditor, Public Service Commission, State Treasurer, State Fiscal Management Board, State Veterans Affairs Board, Attorney General, Department of Agriculture and Commerce, State Board of Pharmacy, State Board of Dental Examiners, State Law Library, State Board of Health, Mississippi Department of Corrections, State Educational Finance Commission, Department of Archives and History, Mississippi State Hospital and Board of Trustees of State Institutions of Higher Learning.

All contracts referred to herein shall be submitted to and approved by the State Fiscal Management Board prior to their execution, except that those contracts under the jurisdiction of the Legislature shall be submitted to and approved by the Legislative Budget Office.

All state agencies shall purchase all commodities required for their operation or for the proper fulfillment of their duties and functions in accordance with Chapter 7 of this title in order to coordinate and promote efficiency and economy in the purchase of such commodities for the state.

HISTORY: Codes, 1942, §§ 8961-01, 8961-04; Laws, 1968, ch. 506, §§ 1, 29; Laws, 1978, ch. 458, § 24; Laws, 1984, ch. 488, § 193; Laws, 1986, ch. 500, § 15; Laws, 1987, ch. 461, § 2, eff from and after passage (approved April 14, 1987).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public

Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Section 37-45-1 provides that the State Educational Finance Commission shall be abolished and functions and duties transferred to the State Board of Education. Section 37-45-3 further provides that all references in laws of the state to "State Educational Finance Commission" or "commission," when referring to the Educational Finance Commission, shall be construed to mean the State Board of Education.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Applicability of this section to acquisition of books, blanks, and stationery by the state board of medical licensure, see § 73-25-39.

RESEARCH REFERENCES

ALR.

Construction and effect of "changed conditions" clause in public works or construction contract with state or its subdivision. 56 A.L.R.4th 1042.

§ 31-1-2. Repealed.

Repealed by Laws, 1987, ch. 461, § 3, eff from and after passage (approved April 14, 1987).

§ 31-1-2. [En Laws, 1986, ch. 500, § 14]

Editor's Notes — Former Section 31-1-2 established a state printing shop and curtailed other printing operations in the Jackson metropolitan area.

§ 31-1-3. Duties vested in Secretary of State.

Any other duties and powers heretofore vested in the former office of board of public contracts and not specifically transferred to a specific state agency or office or specifically repealed are transferred to and vested in the Secretary of State.

HISTORY: Codes, 1942, § 8961-03; Laws, 1968, ch. 506, § 28, eff from and after passage (approved August 8, 1968).

§ 31-1-5. Kinds of paper to be used.

The paper for printing the acts of the Legislature, journals, all pamphlets, department reports, messages, and the like shall be of good quality of a standard book paper of not less than fifty (50) pounds to the ream, and for bills, blanks, circulars, and the like to be of good bond of not less than sixteen (16) pounds to the ream.

HISTORY: Codes, 1892, § 3296; 1906, § 3752; Hemingway's 1917, § 6446; 1930, § 5953; 1942, § 8998; Laws, 1935, ch. 33.

§ 31-1-7. Kinds of type to be used.

The following kinds of type shall be used: The acts of the Legislature shall be set in eight- or ten-point type, solid or leaded, as the Secretary of State may direct; the journals of the Senate and the House shall be set in eight-point type, solid; the department reports, miscellaneous books, pamphlets, and Governor's messages, and the like shall be set in ten-point, eight-point and/or six-point, or other sizes of type, within the discretion of the Secretary of State. The matters of spacing between paragraphs, and of style and type of marginal or headnotes shall be within the discretion of the Secretary of State.

HISTORY: Codes, 1892, § 3295; 1906, § 3751; Hemingway's 1917, § 6445; 1930, § 5952; 1942, § 8997; Laws, 1935, ch. 33; Laws, 1968, ch. 506, § 10, eff from and after passage (approved August 8, 1968).

Cross References — Kind of paper to be used in printing, see § 31-1-5.
Kind of binding to be used in printing, see § 31-1-9.

§ 31-1-9. Binding.

Two kinds of binding for books shall be used, to wit: full buckram, or stiff boards with buckram backs, unless otherwise specified and ordered by the Secretary of State.

A number of copies each of the acts and journals of the Legislature and department reports shall be bound in buckram, sufficient for the state and county libraries and colleges and for such other distribution as the law directs. The exact number of copies of each of the foregoing to be thus bound is left within the discretion of the Secretary of State.

All the remaining copies of the acts and journals shall be bound either in full buckram, or in stiff boards with buckram backs, as the Secretary of State may direct.

The messages of the Governor, reports of officers, boards and institutions, and all other pamphlets shall be in paper covers only, except as the Secretary of State, in his discretion, may direct.

HISTORY: Codes, 1892, §§ 3297, 3306-3308; 1906, §§ 3753, 3762-3764; Hemingway's 1917, §§ 6447, 6455-6457; 1930, §§ 5954, 5962-5964; 1942, §§ 8999, 9005-9007; Laws, 1935, ch. 33; Laws, 1968, ch. 506, §§ 11, 16-18.

Cross References — Paper to be used, see § 31-1-5.
Type to be used in printing, see § 31-1-7.
Size and style of publications, see § 31-1-11.

§ 31-1-11. Contents of page.

The acts of the Legislature, the journals, department reports, pamphlets, and the like shall be set in type of the respective sizes as provided in Section 31-1-7 and in a style such as economy and good workmanship require, within the discretion and under the direction of the Secretary of State. The type size of the pages of the acts, journals and department reports shall be twenty-six (26) by forty-four (44) pica ems, with a trim size of six (6) by nine (9) inches. Pamphlets and books other than the acts, journals and reports shall be of the same or a more convenient size, within the discretion of the Secretary of State. Blank pages shall not be paid for, and in all cases where unnecessary spaces are left, the Secretary of State, in estimating the number of pages in a job, shall deduct a half page for every unnecessary space.

HISTORY: Codes, 1892, § 3298; 1906, § 3754; Hemingway's 1917, § 6448; 1930, § 5955; 1942, § 9000; Laws, 1935, ch. 33; Laws, 1968, ch. 506, § 12, eff from and after passage (approved August 8, 1968).

Cross References — Paper to be used, see § 31-1-5.
Type to be used, see § 31-1-7.
Binding, see § 31-1-9.

§ 31-1-13. No extra charge for collating.

No charge shall be made for counting, folding, stitching, collating, drying, pressing, or other like thing, but all such matter shall be considered as embraced in the printing or binding, as the case may be. The printer or binder, in all instances, is to be understood as obligated to furnish free of cost all paper and material used in the performance of his contract, and to receive and deliver all matter at the capitol.

HISTORY: Codes, 1892, § 3301; 1906, § 3757; Hemingway's 1917, § 6450; 1930, § 5957; 1942, § 9001.

Cross References — Paper to be used, see § 31-1-5.
Type to be used, see § 31-1-7.
Binding, see § 31-1-9.
Size and style of publication, see § 31-1-11.

OPINIONS OF THE ATTORNEY GENERAL

Golden Triangle Regional Medical Center need not comply with public bid requirements in order to contract for collection of delinquent accounts, since this is personal service contract. Nichols, Feb. 11, 1992, A.G. Op. #91-0037.

§ 31-1-15. Number to be printed.

The acts of the Legislature shall be printed in two (2) volumes, one (1) volume containing the public or general acts of the Legislature and the other volume the local and private acts of the Legislature, but for use of state departments the two (2) volumes can be combined. The number of general or public acts of the Legislature, of the local and private acts of the Legislature, of the journals of the Senate and the House of Representatives, of the Governor's message, and of the reports of officers, boards, and institutions to be printed, severally and respectively, shall be left within the discretion of the Secretary of State; and the Secretary of State may sell at a price, approximately the cost of publication, such copies of the laws and journals as may not be needed in the distribution, now or hereinafter required, and for the use of the Legislature and officers of the state.

The Secretary of State is authorized to dispose of all copies of the laws and journals after having kept same and failed to sell same as is provided by law at the expiration of a period of three (3) years from the date of publication. However, the Secretary of State shall keep a minimum of five (5) copies of each such publication on file in his office.

HISTORY: Codes, 1892, § 3302; 1906, § 3758; Hemingway's 1917, § 6451; 1930, § 5958; 1942, § 9002; Laws, 1924, ch. 350; Laws, 1935, ch. 33; Laws, 1952, ch. 334; Laws, 1968, ch. 506, § 13; Laws, 2012, ch. 390, § 3, eff from and after July 1, 2012.

Cross References — Duties of secretary of state in regard to printing of acts and resolutions of legislature, see also § 1-5-1.

§ 31-1-17. Printing schedule.

The Secretary of State shall furnish to the contractor for printing all of the acts of the Legislature within thirty (30) days after the adjournment thereof. The contractor, within ninety (90) days thereafter, shall print, with the index, and bind all copies of the acts as required by the Secretary of State and deliver same to the said secretary, who may extend the time of the contractor, if necessary.

Within six (6) months after the adjournment of the Legislature, the journals of the two (2) houses shall be printed with the indexes, bound, and delivered to the Secretary of State, unless the time be extended by said Secretary of State.

HISTORY: Codes, 1892, §§ 3303, 3304; 1906, §§ 3759, 3760; Hemingway's 1917, §§ 6452, 6453; 1930, §§ 5959, 5960; 1942, §§ 9003, 9004; Laws, 1900, ch. 63; Laws, 1935, ch. 33; Laws, 1968, ch. 506, §§ 14, 15, eff from and after passage (approved August 8, 1968).

Cross References — Furnishing copy for legislative journals, see § 5-1-33.

§ 31-1-19. Labeling.

The acts of the Legislature shall be labeled "Laws of Mississippi" including the year of their passage, and the label shall indicate whether the laws are "general" or "local and private"; and if enacted at an extraordinary session, the label shall so indicate. The journals of the Legislature shall be labeled "House Journal-Mississippi," and "Senate Journal-Mississippi," respectively, and the year of the session shall be indicated thereon; and if for an extraordinary session, the label shall so indicate. The bound copies of the department reports shall be labeled "Department Reports, State of Mississippi," and the label shall disclose the year covered by the reports.

The department reports consist of the Governor's message and the annual reports of all offices, boards, commissions, agencies and institutions.

HISTORY: Codes, 1892, §§ 3309, 3310; 1906, §§ 3765, 3766; Hemingway's 1917, §§ 6458, 6459; 1930, §§ 5965, 5966; 1942, §§ 9008, 9009; Laws, 1935, ch. 33; Laws, 1966, ch. 547, § 2, eff from and after passage (approved May 27, 1966).

§ 31-1-21. Contractor's accounts.

All contractors shall specify each job of work charged for and attach to the account the receipt of the proper officer for the work. The accounts must be accompanied with one copy of each job, of the paper containing the matter charged for, and must state the number of ems or inches and all particulars.

HISTORY: Codes, 1892, § 3313; 1906, § 3767; Hemingway's 1917, § 6460; 1930, § 5967; 1942, § 9010; Laws, 1912, ch. 205; Laws, 1935, ch. 33.

Cross References — Payment of bills for county printing, see § 19-13-117.

§ 31-1-23. Department to read proof.

The department for which the work is done shall examine the proof sheets of all work executed under the provisions of this chapter, and see that they are correctly printed and that all such work is executed in a suitable manner and in accordance with the requirements of law.

HISTORY: Codes, 1892, § 3314; 1906, § 3768; Hemingway's 1917, § 6461; 1930, § 5968; 1942, § 9011; Laws, 1935, ch. 33; Laws, 1968, ch. 506, § 19, eff from and after passage (approved August 8, 1968).

Cross References — Proofreading of printed legislative acts and resolves by secretary of state, see § 1-5-1.

§ 31-1-25. Printing, binding, and stationery.

(1) The purchase of all printing, binding and stationery is hereby defined as a commodity purchase, subject to the provisions of Sections 31-7-1 through 31-7-19, Mississippi Code of 1972.

(2) In the event the provisions of this section conflict with the provisions of any laws or parts of laws, the provisions of this section shall control.

HISTORY: Codes, 1942, § 9013.5; Laws, 1954, Ex Sess, ch. 29, § 2; Laws, 1968, ch. 506, § 20; Laws, 1973, ch. 368, §§ 1, 2, eff from and after passage (approved March 23, 1973).

Editor's Notes — Former § 31-7-17, included within the span of sections referred to in subsection (1), related to the purchase of goods from the state penitentiary and was repealed by Laws of 1988, Ex Sess, ch. 14 § 74, effective from and after passage (approved August 16, 1988).

Former § 31-7-19, included within the span of sections referred to in subsection (1), required equipment and furniture dealers to furnish list prices and specifications to the Department of Finance and Administration and was repealed by Laws of 1993, ch. 556, § 6, effective from and after July 1, 1993.

§ 31-1-27. Certain appraisal records exempt from requirement of public access.

Appraisal information in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which concern the sale or purchase of real or personal property for public purposes prior to public announcement of the purchase or sale, where the release of such records would have a detrimental effect on such sale or purchase, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

HISTORY: Laws, 1983, ch. 424, § 15, eff from and after July 1, 1983.

Cross References — Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

CHAPTER 3.

STATE BOARD OF PUBLIC CONTRACTORS

Sec.

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§ 31-3-1. Definitions.

The following words, as used in this chapter, shall have the meanings specified below:

"Board": The State Board of Contractors created under this chapter.

"Contractor": Any person contracting or undertaking as prime contractor, subcontractor or sub-subcontractor of any tier to do any erection, building, construction, reconstruction, demolition, repair, maintenance or related work on any public or private project; however, "contractor" shall not include any owner of a dwelling or other structure to be constructed, altered, repaired or improved and not for sale, lease, public use or assembly, or any person duly permitted by the Mississippi State Oil and Gas Board, pursuant to Section 53-3-11, Mississippi Code of 1972, to conduct operations within the state, and acting pursuant to said permit. It is further provided that nothing herein shall apply to:

(a) Any contract or undertaking on a public or private project by a prime contractor, subcontractor or sub-subcontractor of any tier involving erection, building, construction, reconstruction, repair, maintenance or related work where such contract, subcontract or undertaking is less than Fifty Thousand Dollars ($50,000.00);

(b) Highway construction, highway bridges, overpasses and any other project incidental to the construction of highways which are designated as federal aid projects and in which federal funds are involved;

(c) A residential project to be occupied by fifty (50) or fewer families and not more than three (3) stories in height;

(d) A residential subdivision where the contractor is developing either single-family or multifamily lots;

(e) A new commercial construction project not exceeding seventy-five hundred (7500) square feet and not more than two (2) stories in height undertaken by an individual or entity licensed under the provisions of Section 73-59-1 et seq.;

(f) Erection of a microwave tower built for the purpose of telecommunication transmissions;

(g) Any contract or undertaking on a public project by a prime contractor, subcontractor or sub-subcontractor of any tier involving the construction, reconstruction, repair or maintenance of fire protection systems where such contract, subcontract or undertaking is less than Five Thousand Dollars ($5,000.00);

(h) Any contract or undertaking on a private project by a prime contractor, subcontractor or sub-subcontractor of any tier involving the construction, reconstruction, repair or maintenance of fire protection systems where such contract, subcontract or undertaking is less than Ten Thousand Dollars ($10,000.00);

(i) Any contract or undertaking on a private or public project by a prime contractor, subcontractor or sub-subcontractor of any tier involving the construction, reconstruction, repair or maintenance of technically specialized installations if performed by a Mississippi contractor who has been in the business of installing fire protection sprinkler systems on or before July 1, 2000; or

(j) Any contractor undertaking to build, construct, reconstruct, repair, demolish, perform maintenance on, or other related work, whether on the surface or subsurface, on oil or gas wells, pipelines, processing plants, or treatment facilities or other structures of facilities. Nothing herein shall be construed to limit the application or effect of Section 31-5-41.

"Certificate of responsibility": A certificate numbered and held by a contractor issued by the board under the provisions of this chapter after payment of the special privilege license tax therefor levied under this chapter.

"Person": Any person, firm, corporation, joint venture or partnership, association or other type of business entity.

"Private project": Any project for erection, building, construction, reconstruction, repair, maintenance or related work which is not funded in whole or in part with public funds.

"Public agency": Any board, commission, council or agency of the State of Mississippi or any district, county or municipality thereof, including school, hospital, airport and all other types of governing agencies created by or operating under the laws of this state.

"Public funds": Monies of public agencies, whether obtained from taxation, donation or otherwise; or monies being expended by public agencies for the purposes for which such public agencies exist.

"Public project": Any project for erection, building, construction, reconstruction, repair, maintenance or related work which is funded in whole or in part with public funds.

HISTORY: Codes, 1942, § 8968-01; Laws, 1958, ch. 473, § 1; Laws, 1960, ch. 393,

§ 1; reenacted, Laws, 1980, ch. 498, § 1; reenacted without change, Laws, 1985, ch. 505, § 7; reenacted and amended, Laws, 1988, ch. 527, § 1; Laws, 1992, ch. 505, § 1; Laws, 2000, ch. 475, § 1; Laws, 2004, ch. 358, § 1; Laws, 2008, ch. 478, § 1; Laws, 2010, ch. 383, § 1; Laws, 2015, ch. 410, § 1, eff from and after July 1, 2015.

Cross References — Requirement of certificate of responsibility, see § 31-3-15.

Levy of special privilege license tax, see § 31-3-17.

Requirement that contractors for road work to be done for county board of supervisors be qualified under the provisions of this chapter, see § 65-9-31.

JUDICIAL DECISIONS

1. In general.

Subcontract was void because a subcontractor was required to have a current certificate of responsibility since the purpose of the subcontract was to clean sewer pipes to prepare for a slip-lining project, and it was a necessary part of the reconstruction, repair, maintenance, or repair work on a public project. The subcontractor could not prevail on a breach of contract case because the payment obligation under such a contract was void. Ace Pipe Cleaning, Inc. v. Hemphill Constr. Co., 134 So. 3d 799, 2014 Miss. App. LEXIS 39 (Miss. Ct. App. 2014).

As the pipe cleaning a subcontractor performed was a necessary part of the reconstruction, repair, maintenance, or related work on a public project, it was required to have a certificate of responsibility; as it did not, its subcontract with a general contractor was void and could not support claims of breach of contract or quantuum meruit. Ace Pipe Cleaning, Inc. v. Hemphill Constr. Co., 2013 Miss. App. LEXIS 276 (Miss. Ct. App. May 21, 2013).

OPINIONS OF THE ATTORNEY GENERAL

Since the term “public funds” defined in this section is extremely broad and includes all state and other governmental type funding, there could be instances where such commercial construction projects would be publicly funded and thus would fall within the exclusion. Brooks, December 3, 1996, A.G. Op. #96-0727.

The term “commercial construction project” as used by the Legislature is intended to describe projects that when completed will be used for commerce or trade (used to make income for the businesses located or using the project) and not residential homes or buildings for governmental type activities. Brooks, December 3, 1996, A.G. Op. #96-0727.

The removal of damaged limbs from trees located on public property is not work which falls within the definition of a “public project” as defined in this section; thus, a licensed tree surgeon performing such work is not to be considered a “contractor” under this section and no certificate of responsibility pursuant to § 31-3-15 is required prior to bidding on a public contract for these services. Bowman, April 30, 1999, A.G. Op. #99-0185.

A school district is clearly a “public agency” and is thereby excluded from the definition of “person;” thus, since school districts are excluded from the definition of “person,” school districts are also excluded from the definition of “contractor.” Gifford, May 14, 1999, A.G. Op. #99-0226.

Maintenance of a beach, consisting of picking up garbage, running sand sweepers to sift rubbish from the sand, and occasionally setting out plants, is analogous to janitorial work in a building and does not require a certificate of responsibility as contemplated in Sections 31-3-1 et seq. Meadows, Oct. 26, 2001, A.G. Op. #01-0663.

A cabin at a publicly owned facility is not a residential project as contemplated in subsection (d). Rayner, Oct. 26, 2001, A.G. Op. #01-0672.

The Port Authority does not have to require a certificate of responsibility for demolition contractors to bid on public projects; however, in its discretion, it may require contractors to have a certificate of responsibility prior to bidding on such projects. Hunter, May 3, 2002, A.G. Op. #02-0207.

When the term "contractor" is used in this chapter, it includes those individuals working on public projects for fire protection systems of $ 5,000.00 or more, and on private projects for the sum of $ 10,000.00 or more; thus, those individuals would be required to obtain a certificate of responsibility. Cardin, Oct. 11, 2002, A.G. Op. #02-0581.

Prior opinion (A.G.Op., Hunter, May 3, 2002), stating that a certificate of responsibility is not required for a demolition contractor, affirmed. Cardin, Nov. 15, 2002, A.G. Op. #02-0662.

The requirement of Section 31-3-1 that a contractor have a valid certificate of responsibility is separate and distinct from the requirement imposed by Section 73-13-45 mandating engineering or architectural services on public construction projects. Elliot, Jan. 10, 2003, A.G. Op. #02-0768.

A bidder merely offering to sell the materials for an automatic meter reading system, together with providing technical support via the telephone, email, etc., would not fall within the definition of a contractor under this section and would not be required to have a certificate of responsibility. Gabriel, Jan. 28, 2005, A.G. Op. 05-0012.

Where there are multiple contracts for one project, the entire project cost as to the contractor in question should be used in determining whether that contractor is required to hold a certificate of responsibility. Thomas, Oct. 27, 2006, A.G. Op. 06-0472.

Section 31-3-1 does not require a certificate of responsibility be obtained by an owner performing work on a commercial building where the work is less than $100,000. Thomas, Oct. 27, 2006, A.G. Op. 06-0472.

Counties and municipalities may require local licensing of contractors, regardless of whether those contractors hold state licenses or certificates of responsibility. Thomas, Oct. 27, 2006, A.G. Op. 06-0472.

An owner of a commercial building may obtain a local building permit, assuming he meets the requirements for same, and serve as general contractor or perform the work himself on a private project that is under $100,000. Thomas, Oct. 27, 2006, A.G. Op. 06-0472.

§ 31-3-2. Declaration of purpose.

The purpose of this chapter, is to protect the health, safety and general welfare of all persons dealing with those who are engaged in the vocation of contracting and to afford such persons an effective and practical protection against incompetent, inexperienced, unlawful and fraudulent acts of contractors.

HISTORY: Laws, 1985, ch. 505, § 6; reenacted, Laws, 1988, ch. 527, § 2, eff from and after July 1, 1988.

§ 31-3-3. Composition of board; removal; filling of vacancies.

There is hereby created the State Board of Contractors of the State of Mississippi, which shall consist of ten (10) members who shall be appointed by the Governor. All appointments to the board shall be made with the advice and consent of the Senate. Two (2) road contractors; two (2) building contractors; two (2) residential builders as defined in Section 73-59-1; one (1) plumbing or heating and air-conditioning contractor; one (1) electrical contractor; and one (1) water and sewer contractor shall compose the board. The Governor shall appoint one (1) additional member who shall be a roofing contractor and whose term of office shall be five (5) years. Each member shall be an actual resident of the State of Mississippi and must have been actually engaged in the contracting business for a period of not less than ten (10) years before appointment. The initial terms of the two (2) residential builders shall be for two (2) and four (4) years, respectively.

Upon the expiration of the term of office of any member of the board, the Governor shall appoint a new member for a term of five (5) years, such new appointments being made so as to maintain on the board two (2) building contractors; two (2) road contractors; two (2) residential builders; one (1) plumbing or heating and air-conditioning contractor; one (1) electrical contractor; and one (1) water and sewer contractor; and one (1) roofing contractor. The Governor shall fill any vacancy by appointment, such appointee to serve the balance of the term of the original appointee. The Governor may remove any member of the board for misconduct, incompetency or willful neglect of duty.

In the event the Governor fails to appoint a member of the board within twelve (12) months of the occurrence of the vacancy, such vacancy shall be filled by majority vote of the board, subject to advice and consent of the Senate and the requirements of this section.

HISTORY: Codes, 1942, § 8968-02; Laws, 1958, ch. 473, § 2; Laws, 1960, ch. 393, § 2; Laws, 1978, ch. 524, § 1; Laws, 1980, ch. 498, § 2; Laws, 1985, ch. 505, § 8; reenacted, Laws, 1988, ch. 527, § 3; Laws, 1992, ch. 382, § 1; Laws, 1993, ch. 534, § 11; reenacted, Laws, 1995, ch. 431, § 11; reenacted without change, Laws, 2000, ch. 345, § 11; reenacted without change, Laws, 2005, ch. 375, § 11; reenacted without change, Laws, 2009, ch. 556, § 11; reenacted without change, Laws, 2011, ch. 433, § 11; reenacted and amended, Laws, 2015, ch. 410, § 2, eff from and after July 1, 2015.

Editor's Notes — Laws of 1992, ch. 382, was vetoed by the Governor on April 20, 1992, and the veto was overridden by the Senate and House of Representatives on April 22, 1992.

Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

Cross References — Role of State Board of Contractors in respect to regulation of residential builders and remodelers, see § 73-59-1.

§ 31-3-5. Organization and administration.

The board shall be assigned suitable office space at the seat of government and shall elect one (1) of its members as chairman and one (1) as vice chairman; and each shall perform the usual duties of such offices. The board may adopt a seal. Six (6) members of the board shall constitute a quorum, and a majority vote of those present and voting at any meeting shall be necessary for the transaction of any business coming before the board. Members must be present to cast votes on any and all business. The executive director shall serve as secretary of the board. The board is authorized to employ such personnel as shall be necessary in the performance of its duties including sufficient administrative and clerical staff to process and review applications for certificates of responsibility, to prepare and administer tests therefor, to investigate applications for certificates of responsibility and to inspect work performed by contractors as may be necessary to enforce and carry out the purpose of this chapter.

HISTORY: Codes, 1942, § 8968-03; Laws, 1958, ch. 473, § 3; Laws, 1980, ch. 498, § 3; Laws, 1985, ch. 505, § 9; reenacted, Laws, 1988, ch. 527, § 4; Laws, 1992, ch. 382, § 2; Laws, 1993, ch. 534, § 12; reenacted without change, Laws, 2000, ch. 345, § 12; reenacted without change, Laws, 2005, ch. 375, § 12; reenacted and amended, Laws, 2009, ch. 556, § 12; reenacted without change, Laws, 2011, ch. 433, § 12; reenacted without change, Laws, 2015, ch. 410, § 3, eff from and after July 1, 2015.

Editor's Notes — Laws of 1992, ch. 382, was vetoed by the Governor on April 20, 1992, and the veto was overridden by the Senate and House of Representatives on April 22, 1992.

Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

§ 31-3-7. Meetings.

The board shall have four (4) regular meetings in each year, one (1) on the second Wednesday in January, one (1) on the second Wednesday in April, one (1) on the second Wednesday in July, and one (1) on the second Wednesday in October, at its offices at the seat of government or through the means of teleconference or video conferencing in accordance with Section 25-41-5. If the regular meeting day falls on a legal holiday, the board shall meet on the next day. The board may hold such special meetings as it finds necessary. However, before any special meeting is held, a notice stating the time, place and primary purpose of such meeting shall be sent by certified or registered mail from the chairman or vice chairman of the board to the other members of the board at least five (5) days before such meeting. Certificates of responsibility shall be issued at any time during the course of a calendar year as prescribed by the rules and regulations of the board. All meetings shall be held in the State of Mississippi. At any regular or special meeting the board may recess from time to time to reconvene on a day and time fixed by an order of the board entered upon its minutes.

The holder of a valid certificate of responsibility shall disclose to the owner or other person with whom the holder is contracting at the signing of a contract or the initial agreement to perform work whether the holder carries general liability insurance. The disclosure shall be written, the structure and composition of which shall be determined by the State Board of Contractors, and shall be placed immediately before the space reserved in the contract for the signature of the purchaser. The disclosure shall be boldfaced and conspicuous type which is larger than the type of the remaining text of the contract.

HISTORY: Codes, 1942, § 8968-04; Laws, 1958, ch. 473, § 4; Laws, 1960, ch. 393, § 3; Laws, 1980, ch. 498, § 4; reenacted, Laws, 1988, ch. 527, § 5; Laws, 1991, ch. 363 § 1; Laws, 2010, ch. 525, § 1; brought forward without change, Laws, 2015, ch. 410, § 4, eff from and after July 1, 2015.

Cross References — Certificates of responsibility, see § 31-3-15.

§ 31-3-9. Compensation of members.

The members of the board shall be entitled to receive a per diem as provided in Section 25-3-69, Mississippi Code of 1972, when actually engaged in the business of the board, together with their actual and necessary traveling and subsistence expenses incurred on behalf of board business, upon itemized statements of same as provided by general law in the case of other state employees. Such statements shall be paid only after the same have been approved by order on the minutes of the board.

HISTORY: Codes, 1942, § 8968-05; Laws, 1958, ch. 473, § 5; Laws, 1980, ch. 498, § 5; reenacted and amended, Laws, 1988, ch. 527, § 6, eff from and after July 1, 1988.

§ 31-3-11. Executive director.

The board shall elect and fix the salary of an executive director, and the board may terminate the employment of such executive director at any time the board deems the same advisable. The board shall require the executive director to file bond in such amount as the board may deem necessary, and shall specify the duties of such employee. The premium on any such bond shall be paid from the funds provided by this chapter.

HISTORY: Codes, 1942, § 8968-06; Laws, 1958, ch. 473, § 6; Laws, 1980, ch. 498, § 6; Reenacted without change, Laws, 1988, ch. 527, § 7; Laws, 2015, ch. 410, § 5, eff from and after July 1, 2015.

§ 31-3-13. Powers and duties.

The board shall have the following powers and responsibilities:

(a) To receive applications for certificates of responsibility, to investigate and examine applicants for same by holding hearings and securing information, to conduct examinations, and to issue certificates of responsibility to such contractors as the board finds to be responsible.

All original certificates and renewals shall expire one (1) year from the date of issuance. Application for renewal of certificates of responsibility, together with the payment of a special privilege license tax as provided under this chapter, shall serve to extend the current certificate until the board either renews the certificate or denies the application.

No certificate of responsibility or any renewal thereof shall be issued until the applicant furnishes to the board his Mississippi state sales tax number or Mississippi state use tax number and his state income tax identification numbers.

Additional fees may be required as provided in Section 31-3-14.

The board shall conduct an objective, standardized examination of an applicant for a certificate to ascertain the ability of the applicant to make practical application of his knowledge of the profession or business of construction in the category or categories for which he has applied for a certificate of responsibility. The board may administer an oral examination to applicants who are unable to take the written examination. The cost of the test and the cost of administering the test shall be paid for by applicants for certificates of responsibility at the time applications are filed. The board shall investigate thoroughly the past record of all applicants, which will include an effort toward ascertaining the qualifications of applicants in reading plans and specifications, estimating costs, construction ethics, and other similar matters. The board shall take all applicants under consideration after having examined him or them and go thoroughly into the records and examinations, prior to granting any certificate of responsibility. If the applicant is an individual, examination may be taken by his personal appearance for examination or by the appearance for examination of one or more of his responsible managing employees; and if a copartnership or corporation or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the executive staff of the applicant's firm, according to its own designation, and such person shall be known as the qualifying party. A qualifying party may serve no more than three (3) separate entities as the qualifying party without first appearing before the board and being granted special permission.

(b) To conduct thorough investigations of all applicants seeking renewal of their licenses and of all complaints filed with the board concerning the performance of a contractor on a public or private project.

(c) To obtain information concerning the responsibility of any applicant for a certificate of responsibility or a holder of a certificate of responsibility under this chapter. Such information may be obtained by investigation, by hearings, or by any other reasonable and lawful means. The board shall keep such information appropriately filed and shall disseminate same to any interested person. The board shall have the power of subpoena.

(d) To maintain a list of contractors to whom certificates of responsibility are issued, refused, revoked or suspended, which list shall be available to any interested person. Such list shall indicate the kind or kinds of works or projects for which a certificate of responsibility was issued, refused, revoked or suspended.

(e) To issue a citation to anyone performing work without having a valid certificate of responsibility as required by this chapter.

(f) To revoke by order entered on its minutes a certificate of responsibility upon a finding by the board that a particular contractor or qualifying party is not responsible, and to suspend such certificate of responsibility in particular cases pending investigation, upon cause to be stated in the board's order of suspension. No such revocation or suspension shall be ordered without a hearing conducted upon not less than ten (10) days' notice to such certificate holder by certified or registered mail, wherein the holder of the certificate of responsibility shall be given an opportunity to present all lawful evidence which he may offer.

(g) To adopt rules and regulations setting forth the requirements for certificates of responsibility, the revocation or suspension thereof, and all other matters concerning same; rules and regulations governing the conduct of the business of the board and its employees; and such other rules and regulations as the board finds necessary for the proper administration of this chapter, including those for the conduct of its hearings on the revocation or suspension of certificates of responsibility. Such rules and regulations shall not conflict with the provisions of this chapter.

(h) The board shall have the power and responsibility to classify the kind or kinds of works or projects that a contractor is qualified and entitled to perform under the certificate of responsibility issued to him. Such classification shall be specified in the certificate of responsibility.

The powers of the State Board of Contractors shall not extend to fixing a maximum limit in the bid amount of any contractor, or the bonding capacity, or a maximum amount of work which a contractor may have under contract at any time, except as stated in paragraph (a) of this section; and the Board of Contractors shall not have jurisdiction or the power or authority to determine the maximum bond a contractor may be capable of obtaining. The board, in determining the qualifications of any applicant for an original certificate of responsibility or any renewal thereof, shall, among other things, take into consideration the following: (i) experience and ability, (ii) character, (iii) the manner of performance of previous contracts, (iv) financial condition, (v) equipment, (vi) personnel, (vii) work completed, (viii) work on hand, (ix) ability to perform satisfactorily work under contract at the time of an application for a certificate of responsibility or a renewal thereof, (x) default in complying with provisions of this law, or any other law of the state, and (xi) the results of objective, standardized examinations. A record shall be made and preserved by the board of each examination of an applicant and the findings of the board thereon, and a certified copy of the record and findings shall be furnished to any applicant desiring to appeal from any order or decision of the board.

(i) The board shall enter upon its minutes an order or decision upon each application filed with it, and it may state in such order or decision the reason or reasons for its order or decision.

Upon failure of the board to enter an order or decision upon its minutes as to any application within one hundred eighty (180) days from the date of filing such application, the applicant shall have the right of appeal as otherwise provided by this chapter.

The holder of a valid certificate of responsibility shall disclose to the owner or other person with whom the holder is contracting at the signing of a contract or the initial agreement to perform work whether the holder carries general liability insurance. The disclosure shall be written, the structure and composition of which shall be determined by the State Board of Contractors, and shall be placed immediately before the space reserved in the contract for the signature of the purchaser. The disclosure shall be boldfaced and conspicuous type which is larger than the type of the remaining text of the contract.

HISTORY: Codes, 1942, § 8968-07; Laws, 1958, ch. 473, § 7; Laws, 1960, ch. 393, § 4; Laws, 1980, ch. 498, § 7; Laws, 1985, ch. 505, § 10; Laws, 1986, ch. 378; reenacted and amended, Laws, 1988, ch. 527, § 8; Laws, 1998, ch. 415, § 4; Laws, 2010, ch. 364, § 1; Laws, 2010, ch. 525, § 2; Laws, 2015, ch. 410, § 6, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 1 of ch. 364, Laws of 2010, effective July 1, 2010 (approved March 15, 2010), amended this section. Section 2 of ch. 525, Laws of 2010, effective July 1, 2010 (approved April 14, 2010), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 525, Laws of 2010, which contains language that specifically provides that it supersedes § 31-3-13 as amended by Laws of 2010, ch. 364.

Cross References — Additional fees to be paid at the time of application or renewal of certificates, see § 31-3-14.

Certificates of responsibility, see § 31-3-15.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Due process.

1. In general.

The Board of Contractors has the authority to determine what types of work require a contractor to obtain a certificate of responsibility. Clancy's Lawn Care & Landscaping v. Mississippi State Bd. of Contrs., 707 So. 2d 1080, 1997 Miss. LEXIS 708 (Miss. 1997).

2. Due process.

Chancery court properly granted a preliminary injunction and reversed a decision by the Mississippi State Board of Contractors revoking a contractor's certificate of responsibility (COR) and in reinstating the COR because the Board violated the contractor's constitutional right to due process of law where where the oard failed to notify the contractor that it would consider prior complaints against the contractor, the Board had no authority to condition the contractor's ability to engage in the contracting business on its payment of a disputed debt, and the chancery court did not abuse its discretion by finding that the elements for a preliminary injunction were met. Miss. State Bd. of Contrs. v. Hobbs Constr., LLC, 291 So. 3d 762, 2020 Miss. LEXIS 57 (Miss. 2020).

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The Port Authority does not have to require a certificate of responsibility for demolition contractors to bid on public projects; however, in its discretion, it may require contractors to have a certificate of responsibility prior to bidding on such projects. Hunter, May 3, 2002, A.G. Op. #02-0207.

RESEARCH REFERENCES

ALR.

Municipal liability for negligent performance of building inspector's duties. 24 A.L.R.5th 200.

Am. Jur.

5 Am. Jur. Pl & Pr Forms (Rev), Building and Construction Contracts, Form 52.1 (complaint to enjoin suspension or

revocation of license based on judgment arising from contractor's services discharged in bankruptcy).

§ 31-3-14. Certificate of responsibility application and renewal fees; Construction Education Fund; creation; distribution of monies; restrictions; reports.

(1) In addition to the fees required for application and renewal for certification and registration of all contractors in Section 31-3-13, all holders of a certificate of responsibility shall pay a fee equal to Two Hundred Dollars ($200.00) at the time of application or renewal of certificates of responsibility. Any residential builder licensed under the provisions of Section 73-59-1 et seq. shall be exempt from the fee imposed under this section. The revenue derived from such additional fees shall be deposited into a fund to be known as the "Construction Education Fund," a special fund created in the State Treasury, and distributed by the State Board of Contractors created in Section 31-3-3, to the Mississippi Construction Education Foundation, public high schools and community colleges that participate in the Mississippi Construction Education Foundation's "school-to-work" program, state universities that have construction technology programs, the Mississippi Housing Institute and certain construction educational trusts approved by the State Board of Contractors in the manner hereinafter provided to offer courses for construction education and construction craft training to meet the needs of the construction industry of the State of Mississippi.

(2) The State Board of Contractors shall, on an annual basis, solicit from the Mississippi state institutions of higher learning, all the public community and junior colleges, the Mississippi Construction Education Foundation, public high schools that participate in the Mississippi Construction Education Foundation's "school-to-work" program and certain construction educational trusts, applications for the use of such funds in construction education and craft training programs in a manner prescribed by the board. The board may appoint a technical advisory committee to advise the board on the most needed areas of construction education and craft training, continuing education or research relating to the construction education and craft training in the state, based on significant changes in the construction industry's practices, economic development or on problems costing public or private contractors substantial waste. The board shall ensure that the monies distributed from this fund are properly spent to promote construction education and craft training in programs in the state which are approved by the board. At least seventy-five percent (75%) of the monies distributed by the board, pursuant to this section, must be used for construction craft training with the exception of the Mississippi Housing Institute.

(3) Each university, junior college, community college, the Mississippi Construction Education Foundation, public high school that participates in the foundation's "school-to-work" program and construction educational trust receiving funds pursuant to this section for construction education or construc-

tion craft training programs shall utilize such funds only for construction education and craft training curricula and program development, faculty development, equipment, student scholarships, student assistantships, and for continuing education programs related to construction education and craft training. Such funds shall not be commingled with the normal operating funds of the educational institution, regardless of the source of such funds.

(4) The State Board of Contractors shall ensure the distribution of reports and the availability of construction education programs established pursuant to this section to all segments of the construction industry that are subject to the fee provided under this section. The board shall cause a report to be made to the Legislature in October of each year, summarizing the allocation of funds by institution or program and summarizing the new projects funded and the status of previously funded projects.

(5) All monies deposited into the Construction Education Fund shall be used exclusively for construction education and craft training, and any unspent funds at the end of the fiscal year shall not revert to the General Fund of the State Treasury but shall be available for construction education and craft training in subsequent fiscal years.

(6) All monies deposited into the Construction Education Fund collected from residential builders licensed under the provisions of Section 73-59-1 et seq. shall be used exclusively for licensed home builders' education and professional development and any unspent funds at the end of the fiscal year shall not revert to the General Fund of the State Treasury but shall be available for construction education and craft training in subsequent fiscal years.

(7) All expenditures from the Construction Education Fund shall be by requisition to the State Auditor, signed by the executive director of the board and countersigned by the chairman or vice chairman of the board, and the State Treasurer shall issue his warrants thereon.

HISTORY: Laws, 1998, ch. 415, § 1; Laws, 2000, ch. 507, § 1; Laws, 2001, ch. 372, § 1; Laws, 2004, ch. 368, § 1; Laws, 2015, ch. 410, § 7, eff from and after July 1, 2015.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Special privilege license tax on each contractor who applies for certificate of responsibility under this chapter, see § 31-3-17.

§ 31-3-15. Certificates of responsibility required for bid.

No contract for public or private projects shall be issued or awarded to any contractor who did not have a current certificate of responsibility issued by said board at the time of the submission of the bid, or a similar certificate issued by a similar board of another state which recognizes certificates issued by said board. Any contract issued or awarded in violation of this section shall be null and void.

HISTORY: Codes, 1942, § 8968-08; Laws, 1958, ch. 473, § 8; Laws, 1960, ch. 393, § 5; Laws, 1980, ch. 498, § 8; Laws, 1985, ch. 505, § 11; reenacted, Laws, 1988, ch. 527, § 9, eff from and after July 1, 1988.

Cross References — Bidding and awards, see § 31-3-21.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Quantum meruit.

1. In general.

Company was not estopped from denying the existence of a contract because the contract between the company and a subcontractor had been declared void under the statute; thus, quasi-estoppel did not apply because the company did not have the right to accept or reject the transaction since the subcontract was void and unlawful. Ground Control, LLC v. Capsco Indus., 214 So. 3d 232, 2017 Miss. LEXIS 93 (Miss. 2017).

Subcontract was void because a subcontractor was required to have a current certificate of responsibility since the purpose of the subcontract was to clean sewer pipes to prepare for a slip-lining project, and it was a necessary part of the reconstruction, repair, maintenance, or repair work on a public project. The subcontractor could not prevail on a breach of contract case because the payment obligation under such a contract was void. Ace Pipe Cleaning, Inc. v. Hemphill Constr. Co., 134 So. 3d 799, 2014 Miss. App. LEXIS 39 (Miss. Ct. App. 2014).

Although appellant's construction contract with appellee was void due to appellant's failure to obtain a certificate of responsibility, as appellee knew appellant lacked the certificate but solicited it to enter into the illegal contract, appellant was not barred from recovery under theories of unjust enrichment or quantum meruit. Ground Control, LLC v. Capsco Indus., 120 So. 3d 365, 2013 Miss. LEXIS 327 (Miss. 2013).

In a case in which a wastewater services company challenged a utility authority's award of a contract to another company for the operation and management of the authority's wastewater facility, the wastewater services company argued unsuccessfully that the contract was void because the company that was awarded the contract did not have a certificate of responsibility, as required by Miss. Code Ann. §§ 31-3-15 and 31-3-21(1). There was no authority to support the conclusion that successful company was required to have a certificate of responsibility to operate and manage a wastewater facility and interceptor system; it was evident from the Request for Proposals and the proposals submitted that the operation and management of the facility was the major component of the project, not its maintenance. Wastewater Plant Serv. Co. v. Harrison County Util. Auth., 28 So. 3d 686, 2010 Miss. App. LEXIS 97 (Miss. Ct. App. 2010).

Under Miss. Code Ann. § 31-3-15, the contractor did not have the appropriate certificate for the work it contracted to perform, and therefore, the contract between the contractor and daycare center was null and void, and any contractual obligations the bank owed the subcontractors were also void. United Plumbing & Heating Co. v. AmSouth Bank, 30 So. 3d 343, 2009 Miss. App. LEXIS 443 (Miss. Ct. App. 2009).

While employees of the contractor both claimed to have held a Florida specialty license for signs, no proof of licensing in Mississippi was forthcoming, and the record provided no insight into whether the Florida specialty license was accompanied by a certificate of responsibility or whether such a certificate, if present, would be recognized in Mississippi under Miss. Code Ann. § 31-3-15; therefore, additional genuine issues of material fact existed regarding the validity of the contractor's contracts with the subcontractors. Aladdin Constr. Co. v. John Hancock Life Ins. Co., 914 So. 2d 169, 2005 Miss. LEXIS 717 (Miss. 2005).

Local commission argued that it in good faith believed that the contractor which was awarded the contract possessed the requisite certificate to complete the project. The contractor submitted certificate numbers on its bid envelope but because the record did not contain adequate information on the contractor certificates submitted to the commission on the project in question, the appellate court would not consider whether or not the contractor was qualified to perform project work. W & W Contrs., Inc. v. Tunica County Airport Comm'n, 881 So. 2d 358, 2004 Miss. App. LEXIS 858 (Miss. Ct. App. 2004).

Where the Board of Contractors, within its statutory authority, has determined that a classification of work does not require a certificate of responsibility, then the section does not prevent a contract being issued to a bidder on a public or private contract involving work in which a certificate of responsibility is not necessary. Clancy's Lawn Care & Landscaping v. Mississippi State Bd. of Contrs., 707 So. 2d 1080, 1997 Miss. LEXIS 708 (Miss. 1997).

Federal court would not abstain from determining validity of arbitration agreement embodied in contract issued to defendant Florida contractor who had failed to obtain certificate of responsibility required by Mississippi statute, since arbitration was mandatory and no extraordinary conflicts between federal and state interests which might necessitate abstention were foreseen. Timberton Golf, L.P. v. McCumber Constr., Inc., 788 F. Supp. 919, 1992 U.S. Dist. LEXIS 5291 (S.D. Miss. 1992).

Failure of Florida corporation to obtain certificate of responsibility in Mississippi under Mississippi law did not render invalid arbitration agreement embodied in contract to develop golf course, even though Mississippi statute provided that contract awarded without certificate of responsibility is null and void. Timberton Golf, L.P. v. McCumber Constr., Inc., 788 F. Supp. 919, 1992 U.S. Dist. LEXIS 5291 (S.D. Miss. 1992).

In action involving contract with Florida corporation for development of golf course, plaintiff failed to establish substantial likelihood of prevailing on merits in respect to argument that no arbitration agreement existed between contracting parties, thus preliminary injunction would not be granted against arbitration. Timberton Golf, L.P. v. McCumber Constr., Inc., 788 F. Supp. 919, 1992 U.S. Dist. LEXIS 5291 (S.D. Miss. 1992).

2. Quantum meruit.

Trial court properly limited the issue at trial to a subcontractor's claim for quantum meruit damages because under the law of the case doctrine, it was bound to follow the mandate on remand that the subcontractor could pursue that non-barred claim; reference to "other penalties" did not open the door for the subcontractor to recover under other theories because it merely provided the trial court discretion to consider whether other statutory penalties applied. Ground Control, LLC v. Capsco Indus., 214 So. 3d 232, 2017 Miss. LEXIS 93 (Miss. 2017).

Even though a subcontractor was unable to prevail in a breach of contract claim because the subcontractor did not have the required certificate of responsibility, the subcontractor was still able to recover under the theory of quantum meruit. Ace Pipe Cleaning, Inc. v. Hemphill Constr. Co., 134 So. 3d 799, 2014 Miss. App. LEXIS 39 (Miss. Ct. App. 2014).

OPINIONS OF THE ATTORNEY GENERAL

Since statute requires that any contractor must have certificate of responsibility issued by State Board of Public Contractors before being awarded contract for public or private projects, either all contractors making up joint venture or joint venture itself must hold certificates of responsibility prior to submitting bid or being awarded contract. Harper, Dec. 3, 1990, A.G. Op. #90-0641.

Certificates of responsibility are not required on public project bids of less than $50,000. Everett, Sept. 4, 1992, A.G. Op. #92-0682.

The removal of damaged limbs from trees located on public property is not work which falls within the definition of a "public project" as defined in § 31-3-1; thus, a licensed tree surgeon performing such work is not to be considered a "contractor" under § 31-3-1 and no certificate of responsibility pursuant to this section is required prior to bidding on a public contract for these services. Bowman, April 30, 1999, A.G. Op. #99-0185.

School districts are not subject to the requirements placed upon contractors by this section and are not required to obtain and maintain a certificate of responsibility thereunder. Gifford, May 14, 1999, A.G. Op. #99-0226.

The Port Authority does not have to require a certificate of responsibility for demolition contractors to bid on public projects; however, in its discretion, it may require contractors to have a certificate of responsibility prior to bidding on such projects. Hunter, May 3, 2002, A.G. Op. #02-0207.

It is apparent from the language found in § 73-59-19 that the legislature intended licensed residential builders or remodelers be exempt from the requirement of this section provided that the commercial project did not exceed 7500 square feet. Hill, Dec. 11, 2003, A.G. Op. 03-0241.

§ 31-3-17. Special privilege license tax; State Board of Contractors Fund.

There is hereby levied, in addition to any taxes otherwise provided for by law, a special privilege license tax of Two Hundred Dollars ($200.00) on each contractor who applies for a certificate of responsibility issued under this chapter; and such tax shall be paid to the executive director of the board upon making such application in this state. The board may levy an additional special privilege license tax not to exceed One Hundred Dollars ($100.00) for each additional classification for which a contractor applies and is found to be qualified. The executive director of the board shall promptly deposit all monies received under this chapter in the State Treasury. Except for the civil penalty provided in Section 31-3-21 which shall be deposited into the State General Fund and the fee provided in Section 31-3-14, all monies received under this chapter shall be kept in a special fund in the State Treasury known as the "State Board of Contractors Fund," and shall be used only for the purposes of this chapter. Such monies shall not lapse at the end of each fiscal year, but all monies in such State Board of Contractors Fund in excess of the sum of fifty percent (50%) of the approved budget for the fiscal year shall be paid over into the General Fund of the State Treasury. All expenditures from the Board of Contractors Fund shall be by requisition to the State Auditor, signed by the executive director of the board and countersigned by the chairman or vice chairman of the board, and the State Treasurer shall issue warrants thereon.

HISTORY: Codes, 1942, § 8968-10; Laws, 1958, ch. 473, § 10; Laws, 1970, ch. 527, § 1; Laws, 1971, ch. 374, § 1; Laws, 1980, ch. 498, § 9; Laws, 1985, ch. 505, § 12; reenacted, Laws, 1988, ch. 527, § 10; Laws, 1992, ch. 505, § 3; Laws, 1998, ch. 415, § 2; Laws, 2004, ch. 358, § 2; Laws, 2015, ch. 410, § 8, eff from and after July 1, 2015.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public

Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

There appears to be a conflict in the language of §§ 31-3-17 and 31-3-21 regarding the disposition of the civil penalties for violations of this chapter. This section provides that the civil penalty provided in § 31-3-21 is to be deposited into the State General Fund, while § 31-3-21 provides that the civil penalty is to be deposited into the State Board of Contractors Fund.

Cross References — Application fee for certificate of responsibility, see § 31-3-13.

Deposit, into State Board of Contractors Fund, of fees collected pursuant to Chapter 59 of Title 73 in connection with licensing of residential builders and remodelers, see § 73-59-3.

Deposit, into State Board of Contractors Fund, of monetary penalties collected for licensing violations committed by residential builders and remodelers, see § 73-59-13.

OPINIONS OF THE ATTORNEY GENERAL

All monies in "State Board of Contractors Fund" in excess of sum of fifty percent of approved budget must be paid over into General Fund of State Treasury. Cardin Aug. 27, 1993, A.G. Op. #93-0507.

The cumulative effect of House Bills 895 and 1523 (2004), amending this section and repealing § 31-3-19, respectively, is that from and after July 1, 2004, the State Board of Contractors will no longer be required to refund the $ 100.00 special privilege license tax collected pursuant to this section. The Board will still only be permitted to collect the $ 50.00 special privilege license tax for additional classifications if the contractor is found to be qualified in that classification. Brooks, July 7, 2004, A.G. Op. 04-0252.

RESEARCH REFERENCES

ALR.

Failure of building and construction artisan or contractor to procure business or occupational license as affecting enforceability of contract or right of recovery for work done-modern cases. 44 A.L.R.4th 271.

Am. Jur.

13 Am. Jur. 2d, Building and Construction Contracts §§ 2, 129, 130.

§ 31-3-19. Repealed.

Repealed by Laws, 2004, ch. 346, § 1, eff from after passage (approved April 19, 2004).

[Codes, 1942, § 8968-09; Laws, 1958, ch. 473, § 9; Laws, 1960, ch. 393, § 6; Laws, 1980, ch. 498, § 10; reenacted, Laws, 1988, ch. 527, § 11, eff from and after July 1, 1988.]

Editor's Notes — Former Section 31-3-19 provided for the application and payment of a special privilege tax for contractors and refund if a certificate of responsibility is not granted.

§ 31-3-21. Bidding and awards.

(1) It shall be unlawful for any person who does not hold a certificate of responsibility issued under this chapter to submit a bid, enter into a contract, or otherwise engage in or continue in this state in the business of a contractor, as defined in this chapter. Any bid which is submitted without a certificate of responsibility number issued under this chapter and without that number appearing on the exterior of the bid envelope, as and if herein required, at the time designated for the opening of such bid, shall not be considered further, and the person or public agency soliciting bids shall not enter into a contract with a contractor submitting a bid in violation of this section. In addition, any person violating this section by knowingly and willfully submitting a bid for projects without holding a certificate of responsibility number issued under this chapter, as and if herein required, at the time of the submission or opening of such bid shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

(2) All bids submitted for public or private projects where the bid is in excess of Fifty Thousand Dollars ($50,000.00) shall contain on the outside or exterior of the envelope or container of such bid the contractor's current certificate number, and no bid shall be opened or considered unless such contractor's current certificate number appears on the outside or exterior of said envelope or container, or unless there appears a statement on the outside or exterior of such envelope or container to the effect that the bid enclosed therewith did not exceed Fifty Thousand Dollars ($50,000.00) with respect to public or private projects. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

(3) In the letting of public contracts preference shall be given to resident contractors, and a nonresident bidder domiciled in a state having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidder's state awards contracts to Mississippi contractors bidding under similar circumstances; and resident contractors actually domiciled in Mississippi, be they corporate, individuals, or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state of domicile of the nonresident. When a nonresident contractor submits a bid for a public project, he shall attach thereto a copy of his resident state's current preference law, if any, pertaining to such state's treatment of nonresident contractors. Any bid submitted by a nonresident contractor which does not include the nonresident contractor's current state law shall be rejected and not considered for award. As used in this section, the term "resident contractors" includes a nonresident person, firm or corporation that has been qualified to do business in this state and has maintained a

permanent full-time office in the State of Mississippi for two (2) years prior to submission of the bid and the subsidiaries and affiliates of such a person, firm or corporation. Any public agency awarding a contract shall promptly report to the Department of Revenue the following information:

(a) The amount of the contract.

(b) The name and address of the contractor reviewing the contract.

(c) The name and location of the project.

(4) In addition to any other penalties provided in this chapter, and upon a finding of a violation of this chapter, the State Board of Contractors may, after notice and hearing, issue an order of abatement directing the contractor to cease all actions constituting violations of this chapter until such time as the contractor complies with Mississippi state law, and to pay to the board a civil penalty to be deposited into the State Board of Contractors' Fund, created in Section 31-3-17, of not more than three percent (3%) of the total contract being performed by the contractor. In addition to, or in lieu of, such civil penalty, the board may issue a public or private reprimand. The funds collected from civil penalty payments shall be used by the State Board of Contractors for enforcement and education.

HISTORY: Codes, 1942, § 8968-11; Laws, 1958, ch. 473, § 11; Laws, 1960, ch. 393, § 7; Laws, 1968, ch. 511, § 1; Laws, 1980, ch. 498, § 11; Laws, 1985, ch. 505, § 13; reenacted and amended, Laws, 1988, ch. 527, § 12; Laws, 1992, ch. 505, § 2; Laws, 1999, ch. 363, § 1; Laws, 2010, ch. 383, § 2; Laws, 2015, ch. 410, § 9, eff from and after July 1, 2015.

Editor's Note — There appears to be a conflict in the language of §§ 31-3-17 and 31-3-21 regarding the disposition of the civil penalties for violations of this chapter. Section 31-3-7 provides that the civil penalty provided in § 31-3-21 is to be deposited into the State General Fund, while § 31-3-21 provides that the civil penalty is to be deposited into the State Board of Contractors Fund.

Cross References — Contract issued or awarded to contractor who didn't have current certificate at time of submission of bid null and void, see § 31-3-15.

Civil penalties provided for in this section to be deposited into the State General Fund, see § 31-3-17.

Preference for resident labor to be used on public works, see § 31-5-17.

Preference to resident contractors, see also § 31-7-47.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Illustrative cases.

1. In general.

In a case in which a wastewater services company challenged a utility authority's award of a contract to another company for the operation and management of the authority's wastewater facility, the wastewater services company argued unsuccessfully that the contract was void because the company that was awarded the contract did not have a certificate of responsibility, as required by Miss. Code Ann. §§ 31-3-15 and 31-3-21(1). There was no authority to support the conclusion that successful company was required to have a certificate of responsibility to operate and manage a wastewater facility and interceptor system; it was evident from the Request for Proposals and the proposals submitted that the operation and management of the facility was the major component of the project, not its maintenance. Wastewater Plant Serv. Co. v. Harrison County Util. Auth., 28 So. 3d 686, 2010 Miss. App. LEXIS 97 (Miss. Ct. App. 2010).

Local commission argued that it in good faith believed that the contractor which was awarded the contract possessed the requisite certificate to complete the project. The contractor submitted certificate numbers on its bid envelope but because the record did not contain adequate information on the contractor certificates submitted to the commission on the project in question, the appellate court would not consider whether or not the contractor was qualified to perform project work. W & W Contrs., Inc. v. Tunica County Airport Comm'n, 881 So. 2d 358, 2004 Miss. App. LEXIS 858 (Miss. Ct. App. 2004).

The statute clearly and unambiguously states that a bid may not be opened, considered or awarded to a contractor who fails to include the certificate of responsibility number on the exterior of the envelope except when a bid for a public project is not in excess of $50,000.00, or not in excess of $100,000.00 for a private project. City of Durant v. Laws Constr. Co., 721 So. 2d 598, 1998 Miss. LEXIS 391 (Miss. 1998).

Federal court would not abstain from determining validity of arbitration agreement embodied in contract issued to defendant Florida contractor who had failed to obtain certificate of responsibility required by Mississippi statute, since arbitration was mandatory and no extraordinary conflicts between federal and state interests which might necessitate abstention were foreseen. Timberton Golf, L.P. v. McCumber Constr., Inc., 788 F. Supp. 919, 1992 U.S. Dist. LEXIS 5291 (S.D. Miss. 1992).

Failure of Florida corporation to obtain certificate of responsibility in Mississippi under Mississippi law did not render invalid arbitration agreement embodied in contract to develop golf course, even though Mississippi statute provided that contract awarded without certificate of responsibility is null and void. Timberton Golf, L.P. v. McCumber Constr., Inc., 788 F. Supp. 919, 1992 U.S. Dist. LEXIS 5291 (S.D. Miss. 1992).

In action involving contract with Florida corporation for development of golf course, plaintiff failed to establish substantial likelihood of prevailing on merits in respect to argument that no arbitration agreement existed between contracting parties, thus preliminary injunction would not be granted against arbitration. Timberton Golf, L.P. v. McCumber Constr., Inc., 788 F. Supp. 919, 1992 U.S. Dist. LEXIS 5291 (S.D. Miss. 1992).

Municipality's minority business utilization "set-aside" plan which, by ordinance, requires non-minority-owned prime contractors awarded city construction contracts to subcontract at least 30 percent of dollar amount of contract to one or more minority business enterprises violates equal protection clause of Fourteenth Amendment because, inter alia, random inclusion of racial groups which may never have suffered from discrimination in city's construction industry suggests city's purpose as not to remedy past discrimination, and 30 percent set-aside is not narrowly tailored to remedy effects of any prior alleged discrimination. Richmond v. J. A. Croson Co., 488 U.S. 469, 109 S. Ct. 706, 102 L. Ed. 2d 854, 1989 U.S. LEXIS 579 (U.S. 1989).

2. Illustrative cases.

Trial court properly limited the issue at trial to a subcontractor's claim for quantum meruit damages because under the law of the case doctrine, it was bound to follow the mandate on remand that the subcontractor could pursue that nonbarred claim; reference to "other penalties" did not open the door for the subcontractor to recover under other theories because it merely provided the trial court discretion to consider whether other statutory penalties applied. Ground Control, LLC v. Capsco Indus., 214 So. 3d 232, 2017 Miss. LEXIS 93 (Miss. 2017).

Though appellant's competitor, a Mississippi company, had not been entitled to a statutory preference since Alabama treated nonresident contractors in the same manner that Mississippi treated nonresident contractors, because the competitor's residence played only a minor part in the school board's decison to award the contract to the competitor, the award was not disturbed on appeal. Rod Cooke Constr. Co. v. Lamar County Sch. Bd., 135 So. 3d 902, 2013 Miss. App. LEXIS 641 (Miss. Ct. App. 2013), cert. denied, 136 So. 3d 437, 2014 Miss. LEXIS 204 (Miss. 2014).

OPINIONS OF THE ATTORNEY GENERAL

In a situation where requested bid bond was not included in sealed package as requested but was tendered prior to the time contractor's bid was opened, the board of supervisors may legally waive the informality of the bid bond not being included in the sealed package and may proceed to consider the bid of that particular contractor. Kilpatrick, Dec. 19, 1997, A.G. Op. #97-0810.

The Port Authority does not have to require a certificate of responsibility for demolition contractors to bid on public projects; however, in its discretion, it may require contractors to have a certificate of responsibility prior to bidding on such projects. Hunter, May 3, 2002, A.G. Op. #02-0207.

A municipal airport authority was required to revoke its prior acceptance of a bid because the certificate of responsibility of the contractor expired when it ceased to exist and the attempted submission of a bid was void pursuant to this section. Moore, Aug. 15, 2003, A.G. Op. 03-0420.

Subsection (3) of this section concerns construction contracts and does require a nonresident bidder to attach a copy of its state's current preference law to its bid for a relevant public project. Adams, Nov. 14, 2003, A.G. Op. 03-0618.

If a School District determines that a foreign corporation meets the definition of a resident contractor, then that corporation would not be required to attach a copy of its state's current bid preference law to its bid. Adams, Nov. 17, 2003, A.G. Op. 03-0596.

Whether bids are equal or substantially equal is a discretionary determination that the public body itself must initially make and that should be explained in the minutes. If it is determined that bids are or are not equal or substantially equal, then the statutory preference provisions in favor of Mississippi bidders apply or do not apply, respectively. Winfield, Jan, 29, 2004, A.G. Op. 03-0501.

The notation on the outside of a bid envelope of the contractor's "license" number is sufficient to meet the requirements of this section. Baum, Sept. 3, 2004, A.G. Op. 04-0451.

Where the two lowest nonresident bidders are both from the same state, the failure by one bidder to include his state's preference statute would not result in his bid being disregarded. Dye, May 19, 2006, A.G. Op. 06-0148.

RESEARCH REFERENCES

ALR.

Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee. 2 A.L.R.4th 991.

Validity of state statute or local ordinance requiring, or giving preference to, the employment of residents by contractors or subcontractors engaged in, or awarded contracts for, the construction of public works or improvements. 36 A.L.R.4th 941.

Waiver of competitive bidding requirements for state and local public building and construction contracts. 40 A.L.R.4th 968.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract. 65 A.L.R.4th 93.

Validity, construction, and effect of state and local laws requiring governmental units to give "purchase preference" to goods manufactured or services performed in state. 84 A.L.R.4th 419.

Am. Jur.

20 Am. Jur. Pl & Pr Forms (Rev), Public Works and Contracts, Forms 1 et seq. (competitive bidding and award of contract).

§ 31-3-23. Appeals.

Within ten (10) days after any order, judgment or action of the board, any person aggrieved thereby may appeal such order, judgment or action either to the chancery court of the county wherein the appellant resides or to the Chancery Court of the First Judicial District of Hinds County, Mississippi, upon giving bond with sufficient security in the amount of Two Hundred Fifty Dollars ($250.00), approved by the clerk of the chancery court and conditioned to pay any costs which may be adjudged against such person. In lieu of the bond, the appellant may post Two Hundred Fifty Dollars ($250.00) with the clerk of the chancery court and conditioned to pay any costs which may be adjudged against such person.

Notice of appeal shall be filed in the office of the clerk of the chancery court, who shall issue a writ of certiorari directed to the board commanding it within forty-five (45) days after service thereof to certify to such court its entire record in the matter in which the appeal has been taken. The appeal shall thereupon be heard in due course by the court, and the court shall review the record and shall affirm or reverse the judgment. If the judgment is reversed, the chancery court or chancellor shall render such order or judgment as the board ought to have rendered, and certify the same to the board; and costs shall be awarded as in other cases.

Appeals may be had to the Supreme Court of the State of Mississippi as provided by law from any final action of the chancery court. The board may employ counsel to defend such appeals, to be paid out of the funds in the State Board of Contractors Fund.

On appeal, any order, judgment or action of the board revoking a certificate of responsibility or residential license shall remain in full force unless the chancery court or Supreme Court reverses such order, judgment or action of the board.

The remedies provided under this chapter for any aggrieved person shall not be exclusive, but shall be cumulative of and supplemental to any other remedies which he may otherwise have in law or in equity, whether by injunction or otherwise.

HISTORY: Codes, 1942, § 8968-12; Laws, 1958, ch. 473, § 12; Laws, 1980, ch. 498, § 12; Laws, 1985, ch. 505, § 14; reenacted, Laws, 1988, ch. 527, § 13; Laws, 2015, ch. 410, § 10, eff from and after July 1, 2015.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. Pl & Pr Forms (Rev), Public Works and Contracts, Forms 1 et seq. (competitive bidding and award of contract).

§ 31-3-25. Repealed.

Repealed by Laws, 1988, ch. 527, § 14, eff from and after July 1, 1988.
§ 31-3-25. [En Laws, 1979, ch. 301, § 30; Laws, 1985, ch. 505, § 15]

Editor's Notes — Former section 31-3-25 provided for the repeal of this chapter.

CHAPTER 5.

PUBLIC WORKS CONTRACTS

In General. 31-5-1
"Hold Harmless" Clauses. 31-5-41
Bonds Securing Public Construction Contracts. 31-5-51

IN GENERAL

Sec.
31-5-1. Repealed.
31-5-3. Bond for payment of taxes, licenses, etc.
31-5-5 through 31-5-13. Repealed.
31-5-15. Withdrawal by contractor of amounts retained on public contracts by furnishing different security.
31-5-17. Resident labor used on public works.
31-5-19. Procedure if resident labor not available.
31-5-21. Penalty.
31-5-23. State products used in public works.
31-5-25. Time for full and final payment to contractors; exemptions; monthly submission by contractors of proof of payments to subcontractors.
31-5-27. Payment of interest on delinquent accounts.
31-5-29. Applicability of Sections 31-5-25, 31-5-27.
31-5-31. Provider to subcontractor of equipment used in road construction contract shall notify general contractor of payments not timely made.
31-5-33. Amount of retainage which may be withheld; exemptions.
31-5-35. Public employees prohibited from requiring bidder on public contract to obtain surety bonds from any particular company, agent, or broker.
31-5-37. Contractors submitting bids for public works projects utilizing specified funding required to submit employment plan with bid; contents of plan; review of individuals for vacant positions.
31-5-39. Public entities to establish cost estimate for public work or improvement projects; authority to allocate additional funds to projects.

§ 31-5-1. Repealed.

Repealed by Laws 1980, ch. 520, § 5, eff from and after April 1, 1981.

§ 31-5-1. [Codes, Hemingway's 1921 Supp, § 2447a; 1930, § 5971; 1942, § 9014; Laws, 1918, ch. 217]

Editor's Notes — Former § 31-5-1 required a bond for payment of labor and contracts.

Laws of 1980, ch 520, § 5, which repealed this section, provided in part that the section will apply and continue in full force and effect as to all bonds and contracts entered into prior to the effective date of the repeal.

§ 31-5-3. Bond for payment of taxes, licenses, etc.

Any person, firm or corporation entering into a formal contract with this state, any county thereof, municipality therein, or any public board, department, commission, or political subdivision of this state, for the construction or maintenance of public buildings, works or projects or the doing of repairs to any public building, works or projects shall be required before commencing same to execute the usual bond with good and sufficient sureties, as required by law, with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, damages, penalties, and interest thereon, when and as the same may lawfully be due this state, or any county, municipality, board, department, commission or political subdivision thereof, by reason of and directly connected with the performance of such contract or any part thereof.

In default of the prompt payment of all such taxes, licenses, assessments, contributions, damages, penalties and interest thereon as may be due by any such contractor, a direct proceeding on said bond may be brought in any court of competent jurisdiction by the proper officer or agency having lawful authority so to do to enforce such payment, the right to so proceed being cumulative and in addition to such other remedies as may be provided by law.

Nothing in this section shall be so construed as to repeal in any respect the provisions of any law having for its purpose the protection and enforcement of claims by persons furnishing labor or materials.

HISTORY: Codes, 1942, § 9014-01; Laws, 1944, ch. 145, §§ 1-3.

Cross References — Provision that construction contracts entered into by a joint water management district shall conform to requirements of §§ 31-5-3 through 31-5-57, see § 51-8-51.

Work performed by contract with state or local agency in connection with relief under Disaster Assistance Act of 1993 as subject to provisions of this chapter, see § 33-15-315.

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

Combinations to defraud in public contracts, see §§ 75-21-15 et seq.

Actions by surety company against defaulting principal, see §§ 87-5-5 et seq.

JUDICIAL DECISIONS

1. In general.

The liability of the surety on a bond given in pursuance of this provision is not affected by Code 1942, § 253, relieving a surety where the creditor fails to sue the principal debtor when notified by the surety to do so. Standard Acci. Ins. Co. v. Standard Oil Co., 242 Miss. 11, 133 So. 2d 539, 1961 Miss. LEXIS 523 (Miss. 1961).

OPINIONS OF THE ATTORNEY GENERAL

With regard to school bonds, Miss. Code Section 31-5-3 lists type of bond that may be required of person entering into formal contract with school board. Cronin, Feb. 10, 1993, A.G. Op. #93-0027.

With regard to school bonds, specifics of this requirement are enumerated at Miss. Code Section 31-5-51. Cronin, Feb. 10, 1993, A.G. Op. #93-0027.

The Mississippi Transportation Commission is authorized to make and promulgate reasonable rules and regulations, to provide and adopt standard specifications, including specifications requiring a warranty or warranties of workmanship, materials or performance, including asphalt paving, as a condition of letting or awarding a road or bridge construction contract. Warren, January 8, 1999, A.G. Op. #98-0759.

RESEARCH REFERENCES

ALR.

What constitutes "public work" within statute relating to contractor's bond. 48 A.L.R.4th 1170.

Am. Jur.

17 Am. Jur. 2d, Contractors' Bonds §§ 1 et seq.

Law Reviews.

Dunn, Construction Contract Claims and Litigation – Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

§§ 31-5-5 through 31-5-13. Repealed.

Repealed by Laws, 1980, ch. 520, § 5, eff from and after April 1, 1981.

§§ 31-5-5 through 31-5-13. [Codes, Hemingway's 1921 Supp. §§ 2447d to 2447f; 1930, §§ 5972-5976; 1942, §§ 9015-9019; Laws, 1918, ch. 217; 1962, ch. 333]

Editor's Notes — Former §§ 31-5-5 through 31-5-13 pertained to suits on a bond. Laws of 1980, ch 520, § 5, which repealed these sections, provided in part that these sections will apply and continue in full force and effect as to all bonds and contracts entered into prior to the effective date of the repeal.

§ 31-5-15. Withdrawal by contractor of amounts retained on public contracts by furnishing different security.

Under any public contract heretofore or hereafter made or awarded by the State of Mississippi, or any agency or department of the State of Mississippi, or by any political subdivision thereof, the contractor may, with the written consent of his or its surety, from time to time, withdraw the whole or any portion of the amount retained from payments due the contractor pursuant to the terms of the contract by depositing with the State Treasurer of the State of Mississippi, or the treasurer or secretary of the political subdivision of the State of Mississippi holding funds belonging to the contractor, the following security, or any combination thereof in an amount equal to or in excess of the amount so withdrawn, said securities to be accepted at the time of deposit at market value but not in excess of par value, to wit:

(1) U. S. Treasury Bonds, U. S. Treasury Notes, U. S. Treasury Certificates of Indebtedness, or U. S. Treasury Bills, or

(2) Bonds or notes of the State of Mississippi, or

(3) Bonds of any political subdivision of the State of Mississippi, or

(4) Certificates of deposit issued by commercial banks located in the State of Mississippi, provided that such certificate is negotiable or is accompanied by a power of attorney executed by the owner of the certificate in favor of the Treasurer of the State of Mississippi or of the treasurer or the secretary of the political subdivision involved, or

(5) Certificates of deposit issued by savings and loan associations located in the State of Mississippi, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or whose accounts are

insured by a company approved by the State Board of Savings and Loan Associations, provided that such certificate is made payable with accrued interest on demand and is accompanied by a power of attorney executed by the owner of the certificate in favor of the Treasurer of the State of Mississippi or the treasurer or secretary of the political subdivision involved, and provided that any such certificate from any of the savings and loan associations referred to in this subparagraph shall not be for an amount in excess of the maximum dollar amount of coverage of the Federal Savings and Loan Insurance Corporation.

The agency or department of the state shall notify the State Treasurer of the amount of deposit required and shall also notify the State Treasurer when to release the deposit. The political subdivision of the state shall notify its treasurer or secretary of the amount of deposit required and shall also notify him when to release the deposit.

The State Treasurer, or the secretary or treasurer of the political subdivision holding said security, shall, from time to time, collect all interest or income on the security so deposited and shall, by and with the written consent of contractor's surety, pay the same when and as collected to the contractor or contractors who deposited said obligations. If the deposit be in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the contractor.

If in the event of an overpayment to a contractor the contracting authority is unable to obtain reimbursement for such overpayments from the contractor, the chief administrative officer of the contracting authority shall notify the contractor, its surety and the State Treasurer or other holder of the security, of the nature of the overpayment and of the failure to obtain reimbursement. Upon such notification, the security holder shall retain the income on the deposited security until an amount equal to the overpayment is accumulated and paid to the contracting authority.

In the event the contractor shall default in the performance of the contract or any portion thereof, the securities deposited by him in lieu of retainage and all interest and coupons and income accruing on said securities after said default may be sold by the state or any agency or department thereof, or any political subdivision, and the proceeds of said sale used as if such proceeds represented the retainage provided for under the contract.

HISTORY: Codes, 1942, § 9022.5; Laws, 1971, ch. 516, § 1, eff from and after July 1, 1971; Laws, 1992, ch. 364, § 1, eff from and after July 1, 1992.

Cross References — Authorization to contract with industries with respect to solid or hazardous waste treatment projects, see §§ 17-17-105, 17-17-121.

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

OPINIONS OF THE ATTORNEY GENERAL

In the instance of a public works contract to be paid with proceeds generated by a revenue bond issued by the City of Gulfport wherein the City enters into a third-party agreement whereby those bond proceeds are being held by a trustee bank, Section 31-5-15 still applies. Galloway, December 6, 1996, A.G. Op. #96-0753.

§ 31-5-17. Resident labor used on public works.

Every public officer, contractor, superintendent, or agent engaged in or in charge of the construction of any state or public building or public work of any kind for the State of Mississippi or for any board, city commission, governmental agency, or municipality of the State of Mississippi shall employ only workmen and laborers who have actually resided in Mississippi for two (2) years next preceding such employment.

HISTORY: Codes, 1942, § 9020; Laws, 1932, ch. 317; Laws, 1938, ch. 359.

Cross References — Procedure if resident labor not available, see § 31-5-19.

Penalty for violation of this section, see § 31-5-21.

Use of state products in public works, see § 31-5-23.

Bidding and contracting procedures under Mississippi Superconducting Super Collider Act, see § 57-67-37.

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

OPINIONS OF THE ATTORNEY GENERAL

The issues of requiring resident labor and products to be used in construction contracts have already been addressed by the Legislature. By enacting these statutes, the state has preempted this field and precluded a county school board from establishing any different requirements for the use of local labor and materials. Rath, March 29, 1996, A.G. Op. #96-0134.

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of state and local laws requiring governmental units to give “purchase preference” to goods manufactured or services performed in state. 84 A.L.R.4th 419.

§ 31-5-19. Procedure if resident labor not available.

In the event workmen or laborers qualified under the provisions of Section 31-5-17 are not available, then the contractor, officer, superintendent, agent, or person in charge of such work shall notify in writing the mayor of the city in which said work is being done, the president of the board of supervisors of the county in which said work is being done, the Governor where said work is being done for the State of Mississippi, and the president, chairman, or executive officer of such board, city commission, or governmental agency for which said work is being done, of such fact. Unless the mayor, Governor, president, executive officer, or chairman aforesaid, as the case may be, shall forthwith supply such contractor, officer, superintendent, agent, or person in charge of said works with the satisfactory workmen or laborers needed, said contractor, officer, superintendent, agent, or person shall be authorized to employ workmen or laborers who are not qualified under the provisions of Section 31-5-17 to make up the deficiency. Nothing herein shall be construed to prevent the State of Mississippi, any county, municipality, board, or commission from placing or letting any contract for the erection or construction of any public building or public work in the open market, or soliciting bids from persons, firms, or corporations without the State of Mississippi. Any person, persons, firm, or corporation from without the State of Mississippi that may obtain such contracts for public buildings or public works shall comply with the provisions of Section 31-5-17 upon undertaking the said contract or work.

HISTORY: Codes, 1942, § 9021; Laws, 1932, ch. 317; Laws, 1938, ch. 359.

Cross References — Awarding of contracts by the Mississippi Transportation Commission, see § 65-1-85.

§ 31-5-21. Penalty.

Any contractor, officer, superintendent, agent, or person in charge of said work who shall violate any of the provisions of Section 31-5-17, shall be liable upon conviction before a court of competent jurisdiction to a fine of not more than One Hundred Dollars ($100.00) or to imprisonment of not more than sixty (60) days, or both at the discretion of the court; and every day's employment of each workman or laborer in such violation shall constitute a separate offense.

However, where any workman or laborer furnishes such employer with a certificate by the sheriff, chancery clerk, or county registrar of the county of his domicile to the effect that such workman or laborer has actually resided in this state two (2) years next preceding such employment, such employer, acting in good faith, shall be relieved of any liability by reason of employing such person.

HISTORY: Codes, 1942, § 9022; Laws, 1932, ch. 317; Laws, 1938, ch. 359.

§ 31-5-23. State products used in public works.

In the construction of any building, highway, road, bridge, or other public work or improvement by the State of Mississippi or any of its political subdivisions or municipalities, only materials grown, produced, prepared, made and/or manufactured within the State of Mississippi should be used. Paint, varnish and lacquer shall be used which shall contain as vehicles tung oil and either ester gum or modified resin (with rosin as the principal base of constituents), and turpentine shall be used as solvent or thinner, all of which said products shall be produced in Mississippi. However, preference shall not be given to materials grown, produced, prepared, made and/or manufactured in the State of Mississippi when other materials of like quality produced without the State of Mississippi may be purchased or secured at less cost, or any other materials of better quality produced without the State of Mississippi can be secured at a reasonable cost.

The duty is hereby enjoined upon all public officers or bodies having the right to contract for the purchase of materials for any such public work to be paid for by the State of Mississippi or any of its political subdivisions or municipalities to faithfully observe the provisions of this section.

All contracts hereafter let to any person, firm or corporation for the construction or doing of any public work shall contain a provision enjoining a like duty upon the contractor with respect to the purchase of materials as would have rested upon the public officer or body letting the contract had he or it done the work and purchased the materials.

Nothing herein shall in any manner apply to any public work or improvement which will be paid for either in whole or in part by funds contributed either directly or indirectly by the United States.

This section is declaratory of public policy of the State of Mississippi.

The boards of supervisors of the State of Mississippi are hereby enjoined, in the letting of contracts in pursuance to Section 65-9-19, to use any and all low gravity oil from the various oil fields in this state in the construction, maintenance, and upkeep of the rural roads, and to faithfully observe the provisions hereof.

HISTORY: Codes, 1942, § 9023; Laws, 1932, ch. 330; Laws, 1950, ch. 392, § 1.

Cross References — Resident labor used on public works, see § 31-5-17.

Bidding and contracting procedures under Mississippi Superconducting Super Collider Act, see § 57-67-37.

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

Award of contracts by highway department, see § 65-1-85.

OPINIONS OF THE ATTORNEY GENERAL

The issues of requiring resident labor and products to be used in construction contracts have already been addressed by the Legislature. By enacting these statutes, the state has preempted this field and precluded a county school board from establishing any different requirements for the use of local labor and materials. Rath, March 29, 1996, A.G. Op. #96-0134.

§ 31-5-25. Time for full and final payment to contractors; exemptions; monthly submission by contractors of proof of payments to subcontractors.

(1) All sums due contractors under all public construction contracts shall be paid as follows:

(a) Partial, progress or interim payments: All partial, progress or interim payments or monies owed contractors shall be paid when due and payable under the terms of the contract. If they are not paid within forty-five (45) calendar days from the day they were due and payable, then they shall bear interest from the due date until paid at the rate of one percent (1%) per month until fully paid.

(b) Final payments: The final payment of all monies owed contractors shall be due and payable:

(i) At the completion of the project or after the work has been substantially completed in accordance with the terms and provisions of the contract;

(ii) When the owner beneficially uses or occupies the project except in the case where the project involves renovation or alteration to an existing facility in which the owner maintains beneficial use or occupancy during the course of the project;

(iii) When the project is certified as having been completed by the architect or engineer authorized to make such certification; or

(iv) When the project is certified as having been completed by the contracting authority representing the State of Mississippi or any of its political subdivisions, whichever event shall first occur.

If the contractor is not paid in full within forty-five (45) calendar days from the first occurrence of one (1) of the above-mentioned events, then said final payment shall bear interest from the date of said first occurrence at the rate of one percent (1%) per month until fully paid.

In no event shall said final payment due the contractor be made until the consent of the contractor's surety has been obtained in writing and delivered to the proper contracting authority.

(c) [Repealed]

(2) Contractors shall submit monthly certification to the project engineer or architect indicating payments to subcontractors on prior payment request.

HISTORY: Codes, 1942, § 9022.7; Laws, 1972, ch. 534, § 1; Laws, 1985, ch. 505, § 1; Laws, 1994 Ex Sess, ch. 26, § 20; Laws, 2002, ch. 519, § 1; Laws, 2006, ch. 331, § 1, eff from and after July 1, 2006.

Editor's Notes — Former paragraph (1)(c), which provided that contracts for the construction of prison facilities let or approved by the State Prison Emergency Construction and Management Board when exercising its emergency powers to remove two thousand (2,000) inmates from county jails were exempt from the section, except where the contracts were for the construction of private correctional facilities and additional facilities at the South Mississippi Correctional Institution and the Central Mississippi Correctional Facility, was repealed by its own terms, effective July 1, 1996.

Cross References — Provision that payments under public works contracts pursuant to this section and § 31-5-27 are not affected by certain general provisions relative to timely payment of invoices by public bodies, see § 31-7-315.

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

JUDICIAL DECISIONS

1. In general.

In a public contract dispute between a county and a corporation with which the county had contracted to reseal a road, the corporation was entitled to prejudgment interest under Miss. Code Ann. § 31-5-25, because this section did not have an exception for disputed amounts, unlike Miss. Code Ann. § 31-7-305. Southland Enters., Inc. v. Newton County, 940 So. 2d 937, 2006 Miss. App. LEXIS 101 (Miss. Ct. App.), cert. denied, 939 So. 2d 805, 2006 Miss. LEXIS 739 (Miss. 2006).

Based upon the delay in payment to the construction company by the county for a completed project, the trial court properly awarded the company interest, costs, and attorney's fees as prescribed by Miss. Code Ann. §§ 31-5-25 and 31-7-309; such an award was supported by the record on appeal as the record contained a contract which provided for interest in the event of late payment, clearly detailed the schedule for progress payments, and clearly prescribed the manner in which final payment was to take place; the county's deposit with the court clearly showed that the funds were present to pay the remaining portion of the contract, but for reasons unknown, the county chose not to honor the final payment provision of the contract until a lawsuit had been filed to determine each party's rights. Humphreys County v. Guy Jones, Jr. Constr. Co., 910 So. 2d 1129, 2005 Miss. App. LEXIS 202 (Miss. Ct. App. 2005).

The statute applied where it was undisputed and the record reflected that the contract at issue was a public construction contract, that the project engineer issued a "Certificate of Substantial Completion" on October 24, 1994, that the project was formally accepted on December 2, 1994, and that final payment was not made to the plaintiff within 60 days thereof; thus, October 24, 1994 was the appropriate date from which interest on the final payment would accrue. Omni Constr., Inc. v. City of Columbus, 1999 U.S. Dist. LEXIS 19761 (N.D. Miss. Nov. 17, 1999).

Section 31-5-25, as amended, was inapplicable to an action which arose before the statute became effective. City of Mound Bayou v. Roy Collins Constr. Co., 499 So. 2d 1354, 1986 Miss. LEXIS 2870 (Miss. 1986).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 31-5-25 provides for interest on late payments on public construction contracts. Collins, Feb. 18, 1993, A.G. Op. #93-0015.

Fact that there may be potential claim against contractor does not affect timing for final payment to contractor following completion of project. Thompson, March 3, 1994, A.G. Op. #93-1010.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Works and Contracts §§ 100 et seq., 112 et seq.

20 Am. Jur. Pl & Pr Forms (Rev), Public Works and Contracts, Forms 91 et seq.

4 Am. Jur. Legal Forms 2d, Building Contracts §§ 47:191 et seq. (compensation).

Law Reviews.

Dunn, Construction Contract Claims and Litigation – Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

§ 31-5-27. Payment of interest on delinquent accounts.

When a contractor receives any payment under a public construction contract, the contractor shall, upon receipt of that payment, pay each subcontractor and material supplier in proportion to the percentage of work completed by each subcontractor and material supplier. If for any reason the contractor receives less than the full payment due under the public construction contract, the contractor shall be obligated to disburse on a pro rata basis those funds received, with the contractor, subcontractors and material suppliers each receiving a prorated portion based on the amount due on the payment. If the contractor without reasonable cause fails to make any payment to his subcontractors and material suppliers within fifteen (15) days after the receipt of payment under the public construction contract, the contractor shall pay to his subcontractors and material suppliers, in addition to the payment due them, a penalty in the amount of one-half of one percent (½ of 1%) per day of the delinquency, calculated from the expiration of the 15-day period until fully paid. The total penalty shall not exceed fifteen percent (15%) of the outstanding balance due.

HISTORY: Codes, 1942, § 9022.8; Laws, 1972, ch. 534, § 2; Laws, 1985, ch. 505, § 2, eff from and after January 1, 1986.

Cross References — Provision that payments under public works contracts pursuant to this section and § 31-5-25 are not affected by certain general provisions relative to timely payment of invoices by public bodies, see § 31-7-315.

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

JUDICIAL DECISIONS

ANALYSIS

1. No penalty where contract was terminated.
2. Court may change 15-day limit.
3. Recovery of statutory damages.

1. No penalty where contract was terminated.

Miss. Code Ann. § 31-5-27 contemplates payment by contractors to suppliers and subcontractors while work is ongoing; when a corporation breached a requirements contract, the contract was terminated and the property owners were no longer entitled to the benefits under the contract, Miss. Code Ann. § 31-5-27 no longer applied to them, and the trial court erred in awarding a statutory penalty. G.B. "Boots" Smith Corp. v. Cobb, 860 So. 2d 774, 2003 Miss. LEXIS 578 (Miss. 2003).

2. Court may change 15-day limit.

Where a purchase order stated "TERMS: Net 30 Days from Invoice Date," defendant prime contractor and plaintiff subcontractor had by contract altered the 15-day payment arrangement under Miss. Code Ann. § 31-5-27 on a public construction project and thus, the subcontractor was not entitled to interest for payments made outside the 15 day limit of § 31-5-27; the word "shall" in § 31-5-27 did not preclude parties from contracting away statutory rights. APAC-Mississippi, Inc. v. James Constr. Group, L.L.C., 370 F. Supp. 2d 528, 2005 U.S. Dist. LEXIS 8778 (S.D. Miss.), op. withdrawn, 386 F. Supp. 2d 725, 2005 U.S. Dist. LEXIS 20575 (S.D. Miss. 2005).

3. Recovery of statutory damages.

Although a subcontractor could not recover statutory damages under the Prompt Pay Act, Miss. Code Ann. § 31-5-27, based upon a 15-day timetable, the subcontractor still had a claim against the contractors for breach of the 30-day timetable for damages in an amount to be determined. APAC-Mississippi, Inc. v. James Constr. Group, L.L.C., 370 F. Supp. 2d 528, 2005 U.S. Dist. LEXIS 8777 (S.D. Miss.), op. withdrawn, 386 F. Supp. 2d 725, 2005 U.S. Dist. LEXIS 20575 (S.D. Miss. 2005).

§ 31-5-29. Applicability of Sections 31-5-25, 31-5-27.

Sections 31-5-25 and 31-5-27, shall apply as to all public construction contracts entered into by all state agencies, commissions, boards and districts and by all municipalities, counties and other political subdivisions of the State of Mississippi.

HISTORY: Codes, 1942, § 9022.9; Laws, 1972, ch. 534, § 3, eff from and after July 1, 1972.

Cross References — Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

§ 31-5-31. Provider to subcontractor of equipment used in road construction contract shall notify general contractor of payments not timely made.

Any person, firm or corporation who leases, rents or sells to any subcontractor any equipment to be used in a road construction contract, wherein a performance and payment bond is required of the general contractor, shall notify the general contractor involved in such contract that credit is being extended by them to the subcontractor and stating the terms of the credit agreement. In the event the subcontractor does not meet his payment obligations as set forth in the credit agreement, the creditor shall notify the general contractor of the nonpayment within thirty (30) days after such payment is due. The creditor shall notify the general contractor upon receipt of any payment which had been reported as past due.

Failure of the creditor to comply with the nonpayment notice provision of this section shall void the terms of the general contractor's performance and payment bond as to such creditor for such equipment leased, rented or sold.

HISTORY: Laws, 1976, ch. 378, eff from and after July 1, 1976.

Cross References — Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

RESEARCH REFERENCES

Law Reviews.

Dunn, Construction Contract Claims and Litigation – Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

§ 31-5-33. Amount of retainage which may be withheld; exemptions.

(1) In any contract for the construction, repair, alteration or demolition of any building, structure or facility awarded by the State of Mississippi, or any agency, unit or department of the State of Mississippi, or by any political subdivision thereof, which contract provides for progress payments in installments based upon an estimated percentage of completion with a percentage of the contract proceeds to be retained by the state agency, unit or department, or by the political subdivision or contractor pending completion of the contract, such retainage shall be five percent (5%), and the amount retained by the prime contractor from each payment due the subcontractor shall not exceed the percentage withheld by the state, or any agency, unit or department of the state, or by any political subdivision thereof, from the prime contractor.

On any contract as described herein, of which the total amount is Two Hundred Fifty Thousand Dollars ($250,000.00) or greater, or on any contract with a subcontractor, regardless of amount, five percent (5%) shall be retained until the work is at least fifty percent (50%) complete, on schedule and satisfactory in the architect's and/or engineer's opinion, at which time fifty percent (50%) of the retainage held to date shall be returned to the prime contractor for distribution to the appropriate subcontractors and suppliers. Provided, however, that future retainage shall be withheld at the rate of two and one-half percent (2-1/2%).

(2) The provisions of this section shall not apply to contracts let by the Mississippi Transportation Commission for the construction, improvement or maintenance of roads and bridges.

HISTORY: Laws, 1979, ch. 454, § 1; Laws, 1984, ch. 406, § 1; Laws, 2002, ch. 519, § 2, eff from and after July 1, 2002.

Editor's Notes — Laws of 1996, ch. 495, § 3, provides as follows:
"SECTION 3. Any agency or governing authority that has received a bid or bids for a public construction or renovation project on or after January 1, 1996, may exercise the authority granted under subparagraph (d)(ii) [now subparagraph (d)(iv)] of Section 31-7-13, Mississippi Code of 1972."

Cross References — Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

OPINIONS OF THE ATTORNEY GENERAL

The Mississippi Transportation Commission may, but is not required to, withhold retainage in contracts for the construction, improvement, or maintenance of roads and bridges. Kopf, Dec. 3, 1999, A.G. Op. #99-0641.

The 2002 amendments to Section 31-5-33 do not apply retroactively to contracts already in existence prior to July 1, 2002. Cardin, Nov. 12, 2002, A.G. Op. #02-0616.

The 2002 amendments to Section 31-5-33 do not apply retroactively to contracts already in existence prior to July 1, 2002. Cardin, Nov. 12, 2002, A.G. Op. #02-0616.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Works and Contracts §§ 95-99.

20 Am. Jur. Pl & Pr Forms (Rev), Public Works & Contracts, Forms 91 et seq.

20 Am. Jur. Pl & Pr Forms (Rev), Public Works and Contracts, Form 37.1 (complaint, petition, or declaration – by contractor – to recover against municipal corporation for portion of payment which municipal corporation withheld on basis of contractor's failure to complete contract by completion date).

15A Am. Jur. Legal Forms 2d, Public Works and Contracts § 216:117 (stipulation to make repairs, retention by municipality).

§ 31-5-35. Public employees prohibited from requiring bidder on public contract to obtain surety bonds from any particular company, agent, or broker.

No state, county, or municipal employee, and no person acting or purporting to act on behalf of such employee, or any state, county or municipal agency, shall, with respect to any public building or construction contract which is about to be or which has been competitively bid or negotiated, require the bidder to make application to or furnish financial data to, or to obtain or procure any of the surety bonds, or surety bond components of wrap-up insurance, that is specified in connection with such contract or specified by any law, from any particular insurance or surety company, agent or broker.

HISTORY: Laws, 2001, ch. 326, § 1, eff from and after July 1, 2001.

§ 31-5-37. Contractors submitting bids for public works projects utilizing specified funding required to submit employment plan with bid; contents of plan; review of individuals for vacant positions.

(1) All public works projects utilizing funds received by state or local governmental entities resulting from a federally declared disaster or a spill of national significance, including damages, penalties, fines or supplemental projects paid or financed by responsible parties pursuant to a court order, negotiated settlement, or other instrument, including under any law distributing such fines and penalties including the federal Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economy of the Gulf Coast Act of 2011 (R.E.S.T.O.R.E.), the Oil Pollution Act of 1990 or the Federal Water Pollution Control Act or similar legislation, shall be subject to the hiring policies established by this section.

(2) Contractors submitting bids for public works projects that involve an expenditure of Five Thousand Dollars ($5,000.00) or more and that are financed, in whole or in part, through the use of funds described in subsection (1) of this section shall submit with their bid a certification that they will comply with the provisions of this section if they are awarded a contract. The contractor shall submit to the agency or governing authority that solicited the bid and the Mississippi Department of Employment Security an employment plan within seven (7) days after the award of the contract which shall include the following:

(a) The types of jobs involved in the public works project;

(b) The skill level of the jobs involved in the project;

(c) Wage information on the jobs involved in the project;

(d) The number of vacant positions that the contractor and any subcontractor needs to fill;

(e) How the contractor and any subcontractor will recruit, low-wage and unemployed individuals for job vacancies;

(f) Such other information as may be required by the Mississippi Department of Employment Security; and

(g) Proof of registration with the Mississippi Department of Employment Security for taxation in accordance with the provisions of Title 71.

(3) From the date written notice of the contract award is received and until ten (10) business days after the receipt of the employment plan by the

Mississippi Department of Employment Security, the contractor and any subcontractor shall not hire any personnel to fill vacant positions necessary for the public works project except residents of the State of Mississippi who are to be verified by the Mississippi Department of Employment Security and/or those qualified individuals who are submitted by the Mississippi Department of Employment Security. For purposes of this subsection, the contractor or subcontractor is authorized to employ Mississippi residents to begin work immediately, and such persons are to be verified by the Mississippi Department of Employment Security after employment by the contractor or subcontractor. During the ten-day period the Mississippi Department of Employment Security shall submit qualified individuals to the contractor to consider for the vacant positions. The contractor shall review the individuals submitted by the department before hiring individuals who are not submitted by the department. The contract award shall be vacated if the contractor fails to comply with the provisions of this subsection.

HISTORY: Laws, 2012, ch. 505, § 1; Laws, 2013, ch. 479, § 1, eff from and after passage (approved April 1, 2013).

§ 31-5-39. Public entities to establish cost estimate for public work or improvement projects; authority to allocate additional funds to projects.

On or before the date and time established to receive bids for any contract related to the construction of any building, highway, road, bridge or other public work or improvement by the State of Mississippi, its agencies, departments, institutions, or instrumentalities of the state or political subdivisions of the state, such entity shall establish a cost estimate for the project. The cost estimate shall reflect the total amount of funds allocated to the project, including the specific amount allocated for construction. Additional funds may be allocated to a project at any time, including for purposes of awarding a contract to the lowest and best bidder. Additional funds may not be allocated after the date and time established for the receipt of bids for the purpose of increasing negotiation authority.

HISTORY: Laws, 2019, ch. 472, § 1, eff from and after passage (approved April 16, 2019).

"HOLD HARMLESS" CLAUSES

Sec.
31-5-41. "Hold harmless" clauses in construction contracts are void; exceptions.

§ 31-5-41. "Hold harmless" clauses in construction contracts are void; exceptions.

With respect to all public or private contracts or agreements, for the construction, alteration, repair or maintenance of buildings, structures, highway bridges, viaducts, water, sewer or gas distribution systems, or other work dealing with construction, or for any moving, demolition or excavation connected therewith, every covenant, promise and/or agreement contained therein to indemnify or hold harmless another person from that person's own negligence is void as against public policy and wholly unenforceable.

This section does not apply to construction bonds or insurance contracts or agreements.

HISTORY: Codes, 1942, § 278.9; Laws, 1972, ch. 400, § 1, eff from and after passage (approved April 27, 1972).

Cross References — Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Difference between additional insureds and indemnification.

1. In general.

Where a subcontract called for the application of Georgia law but defendant subcontractor argued for applying Mississippi's anti-indemnity statute, Miss. Code Ann. § 31-5-41, because the Georgia anti-indemnity law, O.C.G.A. § 13-8-2(b), was in line with, and not contrary to, Mississippi's policy prohibiting a contractor from being indemnified for his own negligence in a construction contract, and, the basis for choosing Georgia law was reasonable in that plaintiff general contractor was a Georgia corporation with its principal place of business in Georgia, the court would apply Georgia law in resolving the indemnity issue. PIC Group, Inc. v. LandCoast Insulation, Inc., 718 F. Supp. 2d 795, 2010 U.S. Dist. LEXIS 91612 (S.D. Miss. 2010).

Miss. Code Ann. § 31-5-41, by its own language, excepts performance bonds, and that exception applies even if the performance bond incorporates the construction contract by reference. Fid. & Deposit Co. of Md. v. Ralph McKnight & Son Constr., 28 So. 3d 1282, 2010 Miss. LEXIS 92 (Miss. 2010).

Miss. Code Ann. § 31-5-41 voided the indemnity provision in the shipyard agreement to the extent that it provided for indemnification of the shipbuilder for the shipbuilder's own negligence; in that no allocation of fault appeared in the record before the court, the lower court's ruling which granted the shipbuilder indemnity was reversed and remanded. Transocean Enter. v. Ingalls Shipbuilding, Inc., 2009 Miss. LEXIS 448 (Miss. Sept. 24, 2009).

Contract between the contractor and employer, who was the insurer's insured, fell outside of the reach of Miss. Code Ann. § 31-5-41, where the contractor did not contract with the employer for the employer to perform construction work or other work dealing with construction; the employer performed no work at all pursuant to the contract, and merely provided contract welders to work at the direction of the contractor; accordingly, the contract was not invalidated by the statute and the trial court properly denied the insurer's motion to intervene. Eagle Pac. Ins. Co. v. Quintanilla, 923 So. 2d 266, 2006 Miss. App. LEXIS 165 (Miss. Ct. App. 2006).

Trial court denied indemnity to lessee on the grounds that if there was an indemnity clause in the contract, an express provision in a construction contract to indemnify a party from its own negligence was not enforceable pursuant to Miss. Code Ann. 31-5-41; however, such denial was improper because the trial court held that the lessee's negligent performance of its duties in supervising the project as architect made it ineligible for indemnity and the court had reversed the finding regarding an architect's duties. Family Dollar Stores of Miss., Inc. v. Montgomery, 946 So. 2d 426, 2006 Miss. App. LEXIS 929 (Miss. Ct. App. 2006).

Where a construction contract between a contractor and a plant owner contained an indemnity clause, the indemnity clause was void under state law and the contractor's insurer was not required to reimburse the plant owner and the plant owner's insurer for personal injury settlements. Certain London Mkt. Ins. Cos. v. Pa. Nat'l Mut. Cas. Ins. Co., 269 F. Supp. 2d 722, 2003 U.S. Dist. LEXIS 16863 (N.D. Miss. 2003), aff'd, 106 Fed. Appx. 884, 2004 U.S. App. LEXIS 14450 (5th Cir. Miss. 2004).

In an action against a general contractor and a subcontractor arising from the death of an iron worker while constructing a casino on a barge on a navigable waterway, a contract provision which required indemnification of the general contractor by the subcontractor for its negligent actions was void as against public policy. Accu-Fab & Constr., Inc. v. Ladner by & Through Ladner, 970 So. 2d 1276, 2000 Miss. App. LEXIS 111 (Miss. Ct. App. 2000), aff'd, 778 So. 2d 766, 2001 Miss. LEXIS 38 (Miss. 2001).

A contract clause, which operated to limit a contractor's (or subcontractor's) rights based on delay, was valid as drafted and was not void as against Mississippi public policy; the clause was not a hold-harmless clause, but rather detailed an agreement between sophisticated parties for remedying delay caused by an owner and merely allowed contractors to limit their losses from delay by seeking an extension of time. PYCA Indus., Inc. v. Harrison County Waste Water Mgmt. Dist., 177 F.3d 351, 1999 U.S. App. LEXIS 10872 (5th Cir. Miss. 1999).

A contract clause, which operated to limit a contractor's or subcontractor's rights based on delay, was valid as drafted and was not void as against Mississippi public policy; the clause was not a hold-harmless clause, but rather detailed an agreement between sophisticated parties for remedying delay and merely allowed contractors to limit their losses from delay by seeking an extension of time. PYCA Indus., Inc. v. Harrison County Waste Water Mgmt. Dist., 177 F.3d 351, 1999 U.S. App. LEXIS 10872 (5th Cir. Miss. 1999).

An agreement, whereby a contractor agreed to indemnify the owner of the premises against all personal injury actions incident to its performance of a construction contract at the premises, was not unenforceable under this section, which blocks indemnity for one's own negligence, since the owner had been absolved of fault in the underlying personal injury action and thus was not seeking to recover for its own negligence. American Cyanamid Co. v. Campbell Constr. Co., 864 F. Supp. 580, 1994 U.S. Dist. LEXIS 14652 (S.D. Miss. 1994).

This section did not apply to prevent the enforcement of an indemnification clause in a licensing agreement. Heritage Cablevision v. New Albany Elec. Power Sys., 646 So. 2d 1305, 1994 Miss. LEXIS 599 (Miss. 1994).

This section does not void paper company's agreement to indemnify railroad where railroad did not undertake to construct or do anything for paper company regarding chip pit, and paper company was solely responsible for maintaining chip pit, where in 1979 supplemental agreement, paper company had undertaken to indemnify railroad for any loss caused by railroad's "own negligence". Illinois C. G. R. Co. v. International Paper Co., 824 F.2d 403, 1987 U.S. App. LEXIS 10953 (5th Cir. Miss. 1987).

Contract between operator of paper mill and railroad company providing that paper mill shall maintain chippit underneath one of railroad's sidetracks and that paper mill would indemnify railroad from any liability for personal injury that railroad might incur was not contract for railroad to construct or do anything for paper mill regarding chippit and thus this section did not void paper mill's agreement to indemnify railroad. Illinois C. G. R. Co. v. International Paper Co., 824 F.2d 403, 1987 U.S. App. LEXIS 10953 (5th Cir. Miss. 1987).

A license agreement between a cable television company which employed the injured claimant and a telephone company was not a "construction contract" within the meaning and prohibition of this section. Therefore, that section did not bar the telephone company from enforcing the indemnity provisions of its contract with the cable television company. Lorenzen v. South Cent. Bell Tel. Co., 546 F. Supp. 694, 1982 U.S. Dist. LEXIS 15636 (S.D. Miss. 1982), aff'd, 701 F.2d 408, 1983 U.S. App. LEXIS 29323 (5th Cir. Miss. 1983).

The indemnity provision of a contract providing that an independent contractor may possibly be required to indemnify the corporation it has contracted with for any liability of that corporation for damages or possible injuries arising out of an independent contractor's negligence is enforceable under this section. Ramsey v. Georgia-Pacific Corp., 511 F. Supp. 393, 1981 U.S. Dist. LEXIS 9498 (S.D. Miss. 1981), aff'd, 671 F.2d 1376, 1982 U.S. App. LEXIS 21589 (5th Cir. Miss. 1982).

In a personal injury action brought by an insured employee against his employer, the trial court erred in dismissing the employer's third-party complaint for indemnity against the independent contractor who had been engaged in installing a conveyer system at the time of the injury at issue, where the indemnity agreement between the parties, when read as a whole, could be read to indemnify the employer against losses incurred by it due to the contractor's acts or negligence, a valid contract, and did not have to be read to protect only against liability because of the employer's acts, a void contract. Ramsey v. Georgia-Pacific Corp., 597 F.2d 890, 1979 U.S. App. LEXIS 13709 (5th Cir. Miss. 1979).

A contractual provision indemnifying defendant tire company from liability arising out of performance of work on its premises by a painting company was ineffective, in light of this statute, to shield defendant from liability to a paint company employee who was burned in a fire while painting on defendant's premises and who alleged that defendant had provided an unsafe work place; no exception from the statute was available for parties of equal bargaining strength, there was no provision for contribution to the settlement burden by the painting company, subsection (b) of the statute, exempting insurance contracts, was not applicable since the contract at issue was an insured indemnity contract, and neither implied indemnity nor quasi contractual indemnity was available. Crosby v. General Tire & Rubber Co., 543 F.2d 1128, 1976 U.S. App. LEXIS 5864 (5th Cir. Ala. 1976).

2. Applicability.

Dismissal of performance bond issuer's lawsuit on the basis that Miss. Code Ann. § 31-5-41 prohibited the issuer from seeking indemnity for its own negligence was error because the last sentence of the statute stated that its provisions did not apply to "construction bonds," and a performance bond was a type of construction bond. Fid. & Deposit Co. of Md. v. Ralph McKnight & Son Constr., 28 So. 3d 1282, 2010 Miss. LEXIS 92 (Miss. 2010).

3. Difference between additional insureds and indemnification.

Where plaintiff contractor was required to be, and was named as, an additional insured under defendant subcontractor's policy, Miss. Code Ann. § 31-5-41 did not apply to such agreements or to the coverage actually procured, but defendant insurer and the subcontractor had no indemnification duty because any agreement to indemnify the contractor for its own negligence was void and in the subcontractor's employee's underlying suit against the contractor alleged that the contractor's negligence caused the employee's injuries. Roy Anderson Corp. v. Transcon. Ins. Co., 358 F. Supp. 2d 553, 2005 U.S. Dist. LEXIS 3173 (S.D. Miss. 2005).

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41 Am. Jur. 2d, Indemnity § 11.

37 Am. Jur. Trials 115, Contractor's Liability for Mishandling Toxic Substance.

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Dunn, Construction Contract Claims and Litigation – Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

BONDS SECURING PUBLIC CONSTRUCTION CONTRACTS

Sec.
31-5-51. Performance and payment bonds; persons entitled to sue on payment bond; proof of general liability insurance required before entering into certain contracts with state or local governments.
31-5-52. Performance and payment bonds required when using design-build or construction manager at risk methods of project delivery.
31-5-53. Time for bringing suit on bond; venue.
31-5-55. Persons entitled to copies of contract and bond.
31-5-57. Award of attorney's fees.

§ 31-5-51. Performance and payment bonds; persons entitled to sue on payment bond; proof of general liability insurance required before entering into certain contracts with state or local governments.

(1) Any person entering into a formal contract with the state or any county, city or political subdivision thereof, or other public authority for the construction, alteration, or repair of any public building or public work, before entering into such contract, shall furnish to such public body, except as provided in subsection (5) of this section, bonds with good and sufficient surety as follows:

(a) A performance bond payable to, in favor of or for the protection of such public body, as owner, for the work to be done in an amount not less than the amount of the contract, conditioned for the full and faithful performance of the contract;

(b) A payment bond payable to such public body but conditioned for the prompt payment of all persons supplying labor or material used in the prosecution of the work under said contract, for the use of each such person, in an amount not less than the amount of the contract; and

(c) The bonds herein provided for may be made by any surety company which is authorized to do business in the State of Mississippi and listed on the United States Treasury Department's list of acceptable sureties, or such bonds may be guaranteed by a personal surety as provided for herein. The personal surety shall deposit with the State Treasurer cash or certificates of deposit in an amount not less than the amount of the contract, and the State Treasurer shall hold same in trust and on deposit for the benefit of the public body that is a party to the contract providing for the construction, alteration or repair of the public building or for the public work.

(2) Every person who has furnished labor or material used in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the date on which the last

of the labor was performed by him or the last of the materials was furnished by him and for which such claim is made, provided the same has been approved, where required, by the public authority or its architect or engineers, or such approval is being withheld as a result of unreasonable acts of the contractor, shall have the right to sue on such payment bond for the amount, or the balance thereof that is due and payable, but unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment. Notwithstanding anything to the contrary contained herein, if the amount claimed in such action is subject to contractual provisions or conditions, between the parties involved in such action, the action shall be abated pending the performance of such provisions and the fulfillment of such conditions.

(3) Any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be given in writing by the claimant to the contractor or surety at any place where the contractor or surety maintains an office or conducts business. Such notice may be personally delivered by the claimant to the contractor or surety, or it may be mailed by certified mail, return receipt requested, postage prepaid, to the contractor or surety. No such action may be maintained by any person not having a direct contractual relationship with the contractor-principal, unless the notice required by this section shall have been given.

(4) The only persons protected by such payment bond, subject to the notice provisions of this section are:

(a) Subcontractors and material suppliers of the contractor;

(b) Sub-subcontractors and material suppliers of those subcontractors named in subsection (4)(a) of this section; and

(c) Laborers who have performed work on the project site.

(5) Whenever a contract is less than Twenty-five Thousand Dollars ($25,000.00) the owners may elect to make a lump sum payment at the completion of the job. Lump sum payments will not be made until completion and acceptance by the governing agency. In such a case a performance bond or payment bond will not be required.

(6) Except as otherwise provided in subsection (1)(c) for a personal surety, no surety or surety company shall be allowed to guarantee or write bonds for the benefit of the public body that is a party to a contract providing for the construction, alteration or repair of a public building or for public work, unless that surety is listed on the United States Treasury Department's list of acceptable sureties. If the surety is not listed on the United States Treasury Department's list of acceptable sureties, the public body for which the public

work is being performed shall be liable to the extent that the surety would be liable.

(7) Any person entering into a formal contract with the state which exceeds Five Thousand Dollars ($5,000.00), or with a county, city or other public authority which exceeds Twenty-five Thousand dollars ($25,000.00), for the construction, alteration, or repair of any public building or public work, before entering into such contract, shall furnish to the public body proof of general liability insurance coverage in an amount not less than One Million Dollars ($1,000,000.00) for bodily injury and property damage. Exempted from the provisions of this subsection are any persons who enter into a contract with the Mississippi Department of Rehabilitation Services for the construction, alteration or repair of the home of a disabled individual who has been determined eligible for services by the Mississippi Department of Rehabilitation Services.

HISTORY: Laws, 1980, ch. 520, § 1; Laws, 1982, ch. 352; Laws, 1994, ch. 626, § 6; Laws, 2000, ch. 409, § 1; Laws, 2001, ch. 416, § 1, eff from and after passage (approved Mar. 13, 2001).

Cross References — Performance and payment bonds required when using design-build or construction manager at risk methods of project delivery, see § 31-5-52.

Time for bringing suit on bond, see § 31-5-53.

Bonds for construction contracts let by urban flood and drainage control districts, see § 51-35-319.

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

Notice in actions on liens, generally, see § 85-7-145.

Assignment of right of action on debt to surety who pays it, see § 87-5-3.

Actions of surety against defaulting principal, see §§ 87-5-5 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Procedural matters.
3.-5. [Reserved for future use.]
6. Under former § 31-5-1 — In general.
7. —Requirements of bond.
8. —Rights and liabilities under bond.
9. —Rights of surety; subrogation.
10. —Procedural matters.
11. Under former § 31-5-5.
12. Under former § 31-5-9.

1. In general.

Where the surety was arguing that its bond obligation was discharged under the chancery court judgment, the appellate court concluded that it had no effect on the bond liability; to permit the chancery court to sub silentio nullify the surety's bond obligation would be contrary to the very purpose of Mississippi's Little Miller Act, which was to provide protection to subcontractors in the absence of lien rights. JSI Communs. v. Travelers Cas. & Sur. Co. of Am., 807 F.3d 725, 2015 U.S. App. LEXIS 21080 (5th Cir. Miss. 2015).

Where only failure to comply with statute was failure to send notice by certified mail, and where there is no dispute but that actual notice was received by proper party, then recovery on bond should not be denied. Brothers in Christ, Inc. v. American Fidelity Fire Ins. Co., 692 F. Supp. 701, 1988 U.S. Dist. LEXIS 9550 (S.D. Miss. 1988).

Where only failure to comply with § 31-5-51(3) is failure to send notice by certified mail, and where there is no dispute that actual notice was received by proper party, then recovery on bond should not be denied. Brothers in Christ, Inc. v. American Fidelity Fire Ins. Co., 692 F. Supp. 701, 1988 U.S. Dist. LEXIS 9550 (S.D. Miss. 1988).

Subcontractor's materialman who did not comply fully with notice requirements of § 31-5-51(3) is not entitled to payment from general contractor's insurance company, notwithstanding materialman's protestations of substantial compliance with statute. Brothers in Christ, Inc. v. American Fidelity Fire Ins. Co., 680 F. Supp. 815, 1987 U.S. Dist. LEXIS 13116 (S.D. Miss. 1987).

Substantial compliance with Miss. Code Annotated § 31-5-51(3) is insufficient, as notice requirements under section are jurisdictional prerequisites to suit. Brothers in Christ, Inc. v. American Fidelity Fire Ins. Co., 680 F. Supp. 815, 1987 U.S. Dist. LEXIS 13116 (S.D. Miss. 1987).

2. Procedural matters.

Trial court erred in granting a principal and a surety summary judgment in a supplier's action alleging bad faith for failing to remit its claim because the discrepancy among the affidavit of a subcontractor's employee and daily logs created a genuine issue of material fact as to whether the employee had personal knowledge that material supplied to the subcontractor was incorporated into the project within the ninety days prior to the filing of the payment-bond claim. Mathes Elec. Supply Co. v. Can't Be Beat Fence Co., 267 So. 3d 788, 2018 Miss. App. LEXIS 424 (Miss. Ct. App. 2018), cert. denied, 267 So. 3d 281, 2019 Miss. LEXIS 167 (Miss. 2019).

Although a surety asserted that the holder of a payment bond lacked standing to bring suit against its own surety under Miss. Code Ann. § 31-5-51(2), Miss. Code Ann. § 27-65-21, not § 31-5-51, was the statute applicable to the question of whether the surety was responsible for the payment of unpaid sales tax, and the court determined that the holder had standing to assert its claims. Nash Plumbing, Inc. v. Ohio Cas. Ins. Co., 2008 Bankr. LEXIS 2008 (Bankr. N.D. Miss. June 11, 2008).

Under Miss. Code Ann. § 31-5-51(3), to be sufficient, notice had to be given between the final work date and the expiration of the 90-day window; by failing to state an amount claimed, the corporation could not satisfy the statutory requirement that the written notice state with substantial accuracy the amount claimed, and the trial court did not err in granting summary judgment in favor of the construction company, bank, and subcontractor. Younge Mech., Inc. v. Max Foote Constr. Co., 869 So. 2d 1079, 2004 Miss. App. LEXIS 286 (Miss. Ct. App. 2004).

3.-5. [Reserved for future use.]

6. Under former § 31-5-1 — In general.

Notice requirements (former §§ 31-5-7, 31-5-13) are jurisdictional prerequisites to suits between parallel or coprime contractors under public contracts when surety bond under former § 31-5-1 is involved. Aetna Casualty & Surety Co. v. Doleac Electric Co., 471 So. 2d 325, 1985 Miss. LEXIS 1961 (Miss. 1985).

The surety on a public contractor's bond, conditioned on the payment of all persons furnishing labor, material, equipment or supplies, is liable to the unpaid materialman of a subcontractor. Mississippi Road Supply Co. v. Western Casualty & Surety Co., 246 Miss. 510, 150 So. 2d 847, 1963 Miss. LEXIS 472 (Miss. 1963).

The liability of the surety on a bond given in pursuance of this provision is not affected by Code 1942, § 253, relieving a surety where the creditor fails to sue the principal debtor when notified by the surety to do so. Standard Acci. Ins. Co. v. Standard Oil Co., 242 Miss. 11, 133 So. 2d 539, 1961 Miss. LEXIS 523 (Miss. 1961).

Where cause was remanded in an attachment suit against a foreign construction company to recover on a performance bond, the remand would be modified so as to permit the intervenors without prejudice to proceed against the surety on the bond where at the time the case was originally remanded the rights to proceed against a surety had not matured. Walker Constr. Co. v. Construction Machinery Corp., 223 Miss. 145, 78 So. 2d 475, 1955 Miss. LEXIS 362 (Miss. 1955).

Where it was provided in a construction contract for a percentage retainage and for progress payments, the right of surety to subrogation in event that contractor failed to fulfill his contract began on the date of execution of bond, and any release of the retainage funds prior to such payments created liability to the surety because of the deprivation of his right of subrogation. State use of National Surety Corp. v. Malvaney, 221 Miss. 190, 72 So. 2d 424, 1954 Miss. LEXIS 528 (Miss. 1954).

The bond of the contractor under this section [Code 1942, § 9014] requires that all laborers and materialmen must be paid for the labor and materials that go into the construction of the public buildings, regardless of whether they are remote materialmen, or whether they have furnished the materials directly to the principal contractor. Western Cas. & Sur. Co. v. Stevens, 218 Miss. 627, 67 So. 2d 510, 1953 Miss. LEXIS 580 (Miss. 1953).

Surety on statutory bond executed by contractor under contract with county to repair bridge, guaranteeing that contractor would promptly, properly and efficiently perform the contract, was not liable to the owner of barges rented to the county to support the bridge and which the contractor was permitted to use, or to the owner's insurer, for damages to the barges caused by negligence of the contractor's employee for the reasons that the bond did not cover such liability and was not for the benefit of the barge owner, and that Code 1942, §§ 9014-9019, pertaining to statutory bonds in connection with contracts for public work and suits thereon, were not complied with. Continental Ins. Co. v. Harrison County, 153 F.2d 671, 1946 U.S. App. LEXIS 1963 (5th Cir. Miss. 1946).

City's suit for purpose of securing order directing distribution of funds due contractor was not within law permitting laborers and materialmen to intervene. Mississippi Fire Ins. Co. v. Evans, 153 Miss. 635, 120 So. 738, 1929 Miss. LEXIS 20 (Miss. 1929).

While statute will be liberally construed it will not be extended beyond the clear meaning of its terms. Oliver Const. Co. v. Crawford, 142 Miss. 490, 107 So. 877, 1926 Miss. LEXIS 126 (Miss. 1926).

Statute does not impose liability upon county for negligence of officers in failing to require bond. Pidgeon Thomas Iron Co. v. Leflore County, 135 Miss. 155, 99 So. 677, 1924 Miss. LEXIS 25 (Miss. 1924).

Nor does such failure of board of supervisors render each member individually liable for claims for labor and materials. Pidgeon Thomas Iron Co. v. Leflore County, 135 Miss. 155, 99 So. 677, 1924 Miss. LEXIS 25 (Miss. 1924).

7. —Requirements of bond.

A bond obtained in conformity to this statute need not cover rental or equipment, although such coverage may be provided by the provisions of the particular bond. However, a bond written so as to cover "repairs on machinery, equipment, and tools . . . " did not carry with it any obligation for a surety to pay equipment rentals. Carter Equipment Co. v. Travelers Indem. Co., 409 F. Supp. 1008, 1975 U.S. Dist. LEXIS 13467 (S.D. Miss.), aff'd, 520 F.2d 941 (5th Cir. Miss. 1975).

Requirement that contractor's bond shall provide for prompt payment to laborers and materialmen is mandatory. Commercial Bank of Magee v. Evans, 145 Miss. 643, 112 So. 482, 1927 Miss. LEXIS 169 (Miss. 1927).

Obligors, obligees, and sureties are presumed to know of such statutory obligation of contractor's bond. Commercial Bank of Magee v. Evans, 145 Miss. 643, 112 So. 482, 1927 Miss. LEXIS 169 (Miss. 1927).

Where bond does not so provide, such requirement will be read into it. Commercial Bank of Magee v. Evans, 145 Miss. 643, 112 So. 482, 1927 Miss. LEXIS 169 (Miss. 1927).

Bond conditioned that contractor will perform all matters covered by contract need not set out provisions of contract. Standard Oil Co. v. National Surety Co., 143 Miss. 841, 107 So. 559, 1926 Miss. LEXIS 327 (Miss. 1926).

8. —Rights and liabilities under bond.

A surety that issued a performance bond to a partnership was liable to unpaid suppliers of petroleum products and heavy equipment for use on the underlying construction project, even though such goods had not been supplied to the partnership per se, where they had been used or consumed in the performance of the partnership contract, within the terms of the bond, and were essential to the construction; as to a supplier of tires for the heavy equipment, which were not likely to have been substantially consumed in the project, the case would be remanded so that testimony could be taken concerning the tires' useful life and the portions thereof that had been consumed on the partnership contract. Houston General Ins. Co. v. Maples, 375 So. 2d 1012, 1979 Miss. LEXIS 2451 (Miss. 1979).

The fact that the retail seller of steel supplies to a general contractor cut off certain of the steel to lengths required by the building specifications and joined other parts so as to prefabricate and rearrange the steel material into sizes, lengths, and forms required by the builder did not constitute him a subcontractor within the purview of this section [Code 1942, § 9014]. Frazier v. O'Neal Steel, Inc., 223 So. 2d 661, 1969 Miss. LEXIS 1288 (Miss. 1969).

In order to constitute a subcontractor under this section [Code 1942, § 9014], it is necessary that there be a contract to construct a part or all of the building contract undertaken by the contractor, and the mere fabrication of material furnished to the general contractor is not enough to constitute a materialman a subcontractor. Frazier v. O'Neal Steel, Inc., 223 So. 2d 661, 1969 Miss. LEXIS 1288 (Miss. 1969).

This section [Code 1942, § 9014] contemplates that if the construction contractor fails to make prompt payment as required by the law, the surety company is liable under its bond for interest due to the persons and firms furnishing materials to the contractor from the date when payment should have been made to them. Faulkner Concrete Pipe Co. v. United States Fidelity & Guaranty Co., 218 So. 2d 1, 1968 Miss. LEXIS 1263 (Miss. 1968).

A firm, required by its contract with the general contractor not only to furnish but also to fabricate and erect steel required for the construction of a school building, is a subcontractor and not merely a materialman, and consequently the company which furnished steel to such subcontractor was itself a materialman entitled under this section [Code 1942, § 9014] to recover from the general contractor and its surety the unpaid cost of materials furnished. O'Neal Steel Co. v. Leon C. Miles, Inc., 187 So. 2d 19, 1966 Miss. LEXIS 1337 (Miss. 1966).

A materialman and laborer of a subcontractor can recover against the prime contractor and the surety on his bond under the provisions of this section [Code 1942, § 9014]. O'Neal Steel Co. v. Leon C. Miles, Inc., 187 So. 2d 19, 1966 Miss. LEXIS 1337 (Miss. 1966).

Surety held liable for sum agreed to be paid subcontractor. H. F. Vann Nieuwenhuyze & Sons Constr. Co. v. Irby, 232 Miss. 474, 99 So. 2d 651, 1958 Miss. LEXIS 295 (Miss. 1958).

One employed by a subcontractor to dig ditches with his own machinery at a stated amount per lineal foot was protected by the payment and performance bond given by the principal contractor. H. F. Vann Nieuwenhuyze & Sons Constr. Co. v. Irby, 232 Miss. 474, 99 So. 2d 651, 1958 Miss. LEXIS 295 (Miss. 1958).

Clause of bond required of contractor in construction of highway for state highway department, providing, in addition to guarantying performance of the contract, for "all the expense and cost and attorney's fees that may be incurred in the enforcement of the performance of said contract, or in the enforcement of the conditions and obligations of this bond," inured to the benefit of laborers and materialmen. Day v. Royce Kershaw, Inc., 185 Miss. 207, 187 So. 221, 1939 Miss. LEXIS 130 (Miss. 1939).

Materialmen by suing principal road contractor instead of subcontractor could not bring themselves within statutes regarding contracts for public work, where their petitions showed that materials were furnished to subcontractor, and that bond sued on was subcontractor's bond. United States Fidelity & Guaranty Co. v. Dedeaux, 168 Miss. 794, 152 So. 274, 1934 Miss. LEXIS 364 (Miss. 1934).

That board of education was without power to contract for building would not relieve contractor or surety from liability to laborers and materialmen. Mississippi Fire Ins. Co. v. Evans, 153 Miss. 635, 120

So. 738, 1929 Miss. LEXIS 20 (Miss. 1929).

Surety on highway contractor's bond held liable for attorney's fees allowed subcontractor suing for balance due on contract. Stowell v. Clark, 152 Miss. 32, 118 So. 370, 1928 Miss. LEXIS 211 (Miss. 1928).

Surety held liable for sum agreed to be paid subcontractor in addition to contract price, as bonus. Stowell v. Clark, 152 Miss. 32, 118 So. 370, 1928 Miss. LEXIS 211 (Miss. 1928).

Subcontractor working on yardage basis held entitled to recover on proving amount of work done by force account. Stowell v. Clark, 152 Miss. 32, 118 So. 370, 1928 Miss. LEXIS 211 (Miss. 1928).

Subcontractor held entitled to interest at 6% on balance due under contract from date of completion. Stowell v. Clark, 152 Miss. 32, 118 So. 370, 1928 Miss. LEXIS 211 (Miss. 1928).

Bond under contract for installing high school heating and ventilating system held to protect materialmen. Union Indem. Co. v. Acme Blow Pipe & Sheet Metal Works, 150 Miss. 332, 117 So. 251, 1928 Miss. LEXIS 171 (Miss. 1928).

Contractor's bond covers only material and labor consumable in work, and not that necessary for contractor to have to perform work. McElrath & Rogers v. W. G. Kimmons & Sons, 146 Miss. 775, 112 So. 164, 1927 Miss. LEXIS 242 (Miss. 1927).

Where items are not properly separated court will reverse case for proper proof and separation. McElrath & Rogers v. W. G. Kimmons & Sons, 146 Miss. 775, 112 So. 164, 1927 Miss. LEXIS 242 (Miss. 1927).

Bond does not cover repairs on equipment, nor machinery coming under head of equipment. McElrath & Rogers v. W. G. Kimmons & Sons, 146 Miss. 775, 112 So. 164, 1927 Miss. LEXIS 242 (Miss. 1927).

Furniture and household effects for maintaining camp to board laborers are not covered by bond. McElrath & Rogers v. W. G. Kimmons & Sons, 146 Miss. 775, 112 So. 164, 1927 Miss. LEXIS 242 (Miss. 1927).

Bond does not cover clothes, cigarettes, tobacco, notions and cash furnished laborers by third parties. McElrath & Rogers v. W. G. Kimmons & Sons, 146 Miss. 775, 112 So. 164, 1927 Miss. LEXIS 242 (Miss. 1927).

However, bond covers necessary food and supplies to board laborers if commissary is not operated for profit. McElrath & Rogers v. W. G. Kimmons & Sons, 146 Miss. 775, 112 So. 164, 1927 Miss. LEXIS 242 (Miss. 1927).

Under this statute [Code 1942, § 9014] the surety on a highway contractor's bond is liable for the price or value of animal foods sold to the contractor and used by him as food for animals doing grading work. Phillips v. Biddle, 18 F.2d 582, 1927 U.S. App. LEXIS 2027 (8th Cir. Kan. 1927).

Contractor's bond protects materialmen, though after its execution one of partners of contracting firm becomes sole remaining member. Excello Feed Milling Co. v. United States Fidelity & Guaranty Co., 145 Miss. 599, 111 So. 94, 1926 Miss. LEXIS 41 (Miss. 1926).

Highway contractor's plant and camp equipment is not material supplied for or used in the work, for which surety is liable. United States Fidelity & Guaranty Co. v. Yazoo County, 145 Miss. 378, 110 So. 780, 1926 Miss. LEXIS 36 (Miss. 1926).

Contractor's bond does not cover money loaned to subcontractor. Oliver Const. Co. v. Crawford, 142 Miss. 490, 107 So. 877, 1926 Miss. LEXIS 126 (Miss. 1926).

On the other hand, surety on bond is not liable for groceries and merchandise furnished commissary operated for profit. Watkins v. United States Fidelity & Guaranty Co., 138 Miss. 388, 103 So. 224, 1925 Miss. LEXIS 65 (Miss. 1925).

Contractor cannot evade liability on bond by subletting work. Oliver Const. Co. v. Dancy, 137 Miss. 474, 102 So. 568, 1925 Miss. LEXIS 15 (Miss. 1925).

9. —Rights of surety; subrogation.

In an action against surety on a contractor's bond executed by person contracting with political subdivision, rent and freight on a dragline and light plant used by the contractor in dredging and improving a ditch and canal are not to be construed as labor and materials furnished in the work of construction. Watts v. Western Casualty & Surety Co., 210 Miss. 211, 49 So. 2d 255, 1950 Miss. LEXIS 339 (Miss. 1950).

In determining rights of surety on bridge contractor's bond, where contract contained no provision for progress payments, entire contract price should be treated as retainage. Davis Co. v. D' Lo Guaranty Bank, 162 Miss. 829, 138 So. 802, 1932 Miss. LEXIS 112 (Miss. 1932).

Rights and liabilities of parties to county bridge repair contract, including surety on contractor's bond, held governed by statutes respecting public contracts. Davis Co. v. D' Lo Guaranty Bank, 162 Miss. 829, 138 So. 802, 1932 Miss. LEXIS 112 (Miss. 1932).

Surety on bridge contractor's bond held entitled, as against subcontractor's assignee, to have laborers and materialmen paid from money which county paid contractor. Davis Co. v. D' Lo Guaranty Bank, 162 Miss. 829, 138 So. 802, 1932 Miss. LEXIS 112 (Miss. 1932).

Entire contract price, under bridge contract with county containing no provision for partial or progress payments, held retainage to which contractor's surety would become subrogated on payment of labor and material claims. Davis Co. v. D'Lo Guaranty Bank, 133 So. 219 (Miss. 1931), superseded, 162 Miss. 829, 138 So. 802, 1932 Miss. LEXIS 112 (Miss. 1932), but see Davis Co. v. D' Lo Guaranty Bank, 162 Miss. 829, 138 So. 802, 1932 Miss. LEXIS 112 (Miss. 1932).

Surety on contractor's bond securing performance of bridge contract with county held entitled, as against subcontractor and latter's assignee, to have labor and material claims paid out of retainage. Davis Co. v. D'Lo Guaranty Bank, 133 So. 219 (Miss. 1931), superseded, 162 Miss. 829, 138 So. 802, 1932 Miss. LEXIS 112 (Miss. 1932), but see Davis Co. v. D' Lo Guaranty Bank, 162 Miss. 829, 138 So. 802, 1932 Miss. LEXIS 112 (Miss. 1932).

Surety company after payment of claims held entitled to subrogation to funds retained by county until completion of contract, as against subsequent assignment. Canton Exchange Bank v. Yazoo County, 144 Miss. 579, 109 So. 1, 1926 Miss. LEXIS 337 (Miss. 1926).

10. —Procedural matters.

In an action by a prime contractor against the surety of another contractor, the trial court erred in sustaining the surety's demurrur to the complaint where the complaint alleged that the second contractor had failed to coordinate its activities with the first contractor as required by their contracts with the State Building Commission and where the surety issued its performance-payment bond knowing that the second contractor had obligations to the other contractors, thus bringing the obligations of the first contractor within the terms of the bond; likewise, the court erred in sustaining the demurrer of the contractor to the surety's counterclaim where the surety alleged that the contractor had breached its duties and obligations to the substituted prime contractor hired by the surety. Hanberry Corp. v. State Bldg. Com., 390 So. 2d 277, 1980 Miss. LEXIS 2087 (Miss. 1980).

In suit brought to August 1933 term of court, judgment for defendants on first day of term, on their special pleas in abatement and limitations filed on that day, held erroneously rendered, since plaintiff had right to demur to special pleas, take issue on them, or reply thereto, which he could not safely do until later day in term. Schilling v. United States Fidelity & Guaranty Co., 169 Miss. 275, 152 So. 887, 1934 Miss. LEXIS 47 (Miss. 1934).

Any ruling on question as to whether case was prematurely tried was not presented, in absence of objection in lower court. Mississippi Fire Ins. Co. v. Evans, 153 Miss. 635, 120 So. 738, 1929 Miss. LEXIS 20 (Miss. 1929).

11. Under former § 31-5-5.

A court in which a materialman's action or the contractor's bond is prematurely brought does not acquire jurisdiction upon the expiration of the six months' period within which such actions may not be brought. Euclid-Mississippi v. Western Casualty & Surety Co., 249 Miss. 547, 163 So. 2d 676, 1964 Miss. LEXIS 416 (Miss. 1964).

A materialman's action brought October 5 is within a six months' period from April 5, and hence premature. Euclid-Mississippi v. Western Casualty & Surety Co., 249 Miss. 547, 163 So. 2d 676, 1964 Miss. LEXIS 416 (Miss. 1964).

Actions on contracts for public work are purely statutory. Euclid-Mississippi v. Western Casualty & Surety Co., 249 Miss. 547, 163 So. 2d 676, 1964 Miss. LEXIS 416 (Miss. 1964).

The liability of the surety on a bond given in pursuance of this provision is not affected by Code 1942, § 253, relieving a surety where the creditor fails to sue the principal debtor when notified by the surety to do so. Standard Acci. Ins. Co. v. Standard Oil Co., 242 Miss. 11, 133 So. 2d 539, 1961 Miss. LEXIS 523 (Miss. 1961).

Surety on statutory bond executed by contractor under contract with county to repair bridge, guaranteeing that contractor would promptly, properly and efficiently perform the contract, was not liable to the owner of barges rented to the county to support the bridge and which the contractor was permitted to use, or to the owner's insurer, for damages to the barges caused by negligence of the contractor's employee, for the reasons that the bond did not cover such liability and was not for the benefit of the barge owner, and that [Code 1942, § 9015] §§ 9014-9019, pertaining to statutory bonds in connection with contracts for public work and suits thereon, were not complied with. Continental Ins. Co. v. Harrison County, 153 F.2d 671, 1946 U.S. App. LEXIS 1963 (5th Cir. Miss. 1946).

In an action on a bond, which in addition to guarantying the performance of a contract with the state highway department, provided also for all of the expense and cost and attorney's fees that might be incurred in the enforcement of the performance of the contract, or in the enforcement of the conditions and obligations of the bond, attorney's fees incurred by materialmen in inducing the state highway department, which had neglected to publish notice of the completion of the contract, to publish such notice and in bringing suit on the bond, were recoverable; and defendant's alleged tender of the principal and interest due under the contract prior to the expiration of the six months' period was ineffective. Day v. Royce Kershaw, Inc., 185 Miss. 207, 187 So. 221, 1939 Miss. LEXIS 130 (Miss. 1939).

In view of the fact that no action could be brought on a bond guarantying the performance of a highway construction project for six months after the publication of a notice of by the principal obligee of the completion of the contract, attorney's fees and costs incurred by materialmen in a premature suit to recover on the bond could not be recovered. Day v. Royce Kershaw, Inc., 185 Miss. 207, 187 So. 221, 1939 Miss. LEXIS 130 (Miss. 1939).

Under statute authorizing materialmen and laborers to bring suit on bond of contractor with State within one year after final settlement or abandonment of contract and publication of notice thereof, publication of final settlement or abandonment of contract held essential prerequisite of maintenance of suit as well as publication of notice of pendency of suit. United States Fidelity & Guaranty Co. v. Plumbing Wholesale Co., 175 Miss. 675, 166 So. 529, 1936 Miss. LEXIS 31 (Miss. 1936).

Materialman's action on municipal paving contractor's bond which was begun more than one year after final settlement of paving contract was not barred, where no publication of final settlement was made. Dixie Minerals Corp. v. Dixie Asphalt Paving Co., 172 Miss. 218, 159 So. 562, 1935 Miss. LEXIS 127 (Miss. 1935).

Where municipal paving contract was fully performed, and city commissioners entered order setting forth balance due contractor, approving estimate, and ordering payment, there was "final settlement" of contract within statute giving materialmen action on contractor's bond, though payment had not been made. Dixie Minerals Corp. v. Dixie Asphalt Paving Co., 172 Miss. 218, 159 So. 562, 1935 Miss. LEXIS 127 (Miss. 1935).

Judgment for defendants on first day of term, on their special pleas in abatement and limitations filed on that day held erroneous, since plaintiff had right to demur to special pleas, take issue on them, or reply thereto, which he could not safely do until later day of term. Schilling v. United States Fidelity & Guaranty Co., 169 Miss. 275, 152 So. 887, 1934 Miss. LEXIS 47 (Miss. 1934).

12. Under former § 31-5-9.

Where notice of a final settlement with the prime contractor on a highway construction project was published by the state highway commission on November 3, 1966, and one supplier began an action on October 24, 1967 on the prime contractor's bond, a welder filed a separate suit on November 2, 1967, and the surety elected by a special plea to have all of the claimants under the prime contractor's performance bond joined as parties in the first action, the welder's claim was properly transferred and designated as an intervention dated November 2, so that the action was not subject to the one year limitation statute. Dixie Contractors, Inc. v. Ballard, 249 So. 2d 653, 1971 Miss. LEXIS 1170 (Miss. 1971).

Assuming that the 1962 amendment of this section [Code 1942, § 9017] permits separate suits on a contractor's bond, it is not applicable in a case in which the bond was given the contract was complete, and publication made, before its effective date. Euclid-Mississippi v. Western Casualty & Surety Co., 249 Miss. 547, 163 So. 2d 676, 1964 Miss. LEXIS 416 (Miss. 1964).

Surety on statutory bond executed by contractor under contract with county to repair bridge, guaranteeing that contractor would promptly, properly and efficiently perform the contract, was not liable to the owner of barges rented to the county to support the bridge and which the contractor was permitted to use, or to the owner's insurer, for damages to the barges caused by negligence of the contractor's employee, for the reasons that the bond did not cover such liability and was not for the benefit of the barge owner, and that Code 1942, §§ 9014-9019, pertaining to statutory bonds in connection with contracts for public work and suits thereon, were not complied with. Continental Ins. Co. v. Harrison County, 153 F.2d 671, 1946 U.S. App. LEXIS 1963 (5th Cir. Miss. 1946).

However, equity court had jurisdiction of suit by materialman against surety on bond of contractor with State where three separate contracts had been executed with same contractor and with same surety on all bonds, and materials furnished by materialman went indiscriminately into all of such contracts, so that materialman was unable to ascertain how much went into each contract and sought discovery of facts with reference thereto. United States Fidelity & Guaranty Co. v. Plumbing Wholesale Co., 175 Miss. 675, 166 So. 529, 1936 Miss. LEXIS 31 (Miss. 1936).

Street paving contractor held not necessary party in suit on his surety bond for amount due for cement. Marquette Cement Mfg. Co. v. Fidelity & Deposit Co., 173 Miss. 164, 158 So. 924, 1935 Miss. LEXIS 191 (Miss. 1935).

Bill in materialman's suit against sureties on paving contractor's bonds for performance of nine separate and distinct contracts, held demurrable as improperly joining several separate and distinct causes of action. Marquette Cement Mfg. Co. v. Fidelity & Deposit Co., 173 Miss. 164, 158 So. 924, 1935 Miss. LEXIS 191 (Miss. 1935).

Allegation in bill that materialman kept only one account of cement supplied contractor and some payments were credited generally on account, held not to show necessity for accounting which would authorize combining causes of action by complainant and others on each bond in one suit. Marquette Cement Mfg. Co. v. Fidelity & Deposit Co., 173 Miss. 164, 158 So. 924, 1935 Miss. LEXIS 191 (Miss. 1935).

Materialmen by suing principal road contractor instead of subcontractor could not bring themselves within statutes regarding contracts for public work, where their petitions showed that materials were furnished to subcontractor, and that bond sued on was subcontractor's bond. United States Fidelity & Guaranty Co. v. Dedeaux, 168 Miss. 794, 152 So. 274, 1934 Miss. LEXIS 364 (Miss. 1934).

Materialmen not parties to suit by assignee of contractor to compel issuance of pay certificates held not bound by judgment therein. Commercial Bank of Magee v. Evans, 145 Miss. 643, 112 So. 482, 1927 Miss. LEXIS 169 (Miss. 1927).

OPINIONS OF THE ATTORNEY GENERAL

The Mississippi Transportation Commission is authorized to make and promulgate reasonable rules and regulations, to provide and adopt standard specifications, including specifications requiring a warranty or warranties of workmanship, materials or performance, including asphalt paving, as a condition of letting or awarding a road or bridge construction contract. Warren, January 8, 1999, A.G. Op. #98-0759.

Where bid specifications did not include a requirement for a bid bond, a county board of supervisors must consider the low bid even though no bid bond was submitted with the official bid. Tutor, Aug. 8, 2003, A.G. Op. 03-0371.

Where performance bond, required by law, was not included in bid specifications by a school board, the board should treat the bids as if the cost of the statutorily required item, the performance bond, is included in the bid. The board thus has the authority to review the bids, consider the cost of the performance bond as already included in the bid submitted, and make a determination of lowest and best bid and reflect same as a finding on the board's minutes. Beckett, Nov. 14, 2003, A.G. Op. 03-0494.

Where a performance bond was not included in bid specifications by a school board, the board should treat the bids as if the cost of the bond was included. The board thus has the authority to review the bids, consider the cost of the performance bond as already included in the bid submitted, and make a determination of lowest and best bid and reflect same as a finding on the board's minutes. Beckett, Nov. 14, 2003, A.G. Op. 03-0494.

RESEARCH REFERENCES

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Labor or material furnished by subcontractor for public work or improvement as within coverage of bond of principal contractor. 92 A.L.R.2d 1250.

Sufficiency of designation of owner in notice, claim or statement of mechanic's lien. 48 A.L.R.3d 153.

Effect of bankruptcy of principal contractor upon mechanic's lien of a subcontractor, laborer, or materialman as against owner of property. 69 A.L.R.3d 1342.

Release or waiver of mechanic's lien by general contractor as affecting rights of subcontractor or materialman. 75 A.L.R.3d 505.

What constitutes "public work" within statute relating to contractor's bond. 48 A.L.R.4th 1170.

Am. Jur.

17 Am. Jur. 2d, Contractors' Bonds §§ 25, 73 et seq.

7 Am. Jur. Pl & Pr Forms (Rev), Contractors' Bonds, Forms 71 et seq. (public construction work and contracts; state law).

4 Am. Jur. Legal Forms 2d, Building Contracts §§ 47:51 et seq. (formation; contracts); §§ 47:71 et seq. (formation; optional provisions).

5A Am. Jur. Legal Forms 2d, Contractors' Bonds §§ 67:41 et seq. (performance bonds and bonds securing payment of labor, materials, and other liens).

15 Am. Jur. Legal Forms 2d, Public Works and Contracts § 216:162 (other obligations of contract; bonds).

CJS.

72 Supp C.J.S., Public Contracts §§ 42, 43 et seq.

Law Reviews.

Yarbrough, Rights and Remedies Under Mississippi's New Public Construction Bond Statute. 51 Miss. L. J. 351, December 1980.

Dunn, Construction Contract Claims and Litigation – Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

§ 31-5-52. Performance and payment bonds required when using design-build or construction manager at risk methods of project delivery.

The use of either the design-build method of project delivery as provided in Section 31-7-13.1 or the construction manager at risk method of project delivery as provided in Section 31-7-13.2 must comply with the provisions of Section 31-5-51.

HISTORY: Laws, 2007, ch. 494, § 3, eff from and after July 1, 2007.

§ 31-5-53. Time for bringing suit on bond; venue.

(a) When suit is instituted on a performance bond given in accordance with this chapter, it shall be commenced within one (1) year after the obligee shall have made final payment on the contract; provided, however, if the contract is abandoned by the general contractor as bond principal or is terminated by the bond obligee, suit shall be commenced within one (1) year after the earlier of the abandonment by the bond principal or termination by the bond obligee.

(b) When suit is instituted on a payment bond given in accordance with this chapter, it shall be commenced within one (1) year after the day on which the last of the labor was performed or material was supplied by the person bringing the action and not later.

(c) Any suit brought on a performance or payment bond given in accordance with this chapter shall be brought in the county in which the contract or some part thereof was performed or in the county in which service of process may be obtained upon either the principal or the surety on such bond.

HISTORY: Laws, 1980, ch. 520, § 2; Laws, 1994, ch. 626, § 4; Laws, 2004, ch. 452, § 1, eff from and after July 1, 2004.

Editor's Notes — This section takes effect on April 1, 1981, and applies only to contracts entered into from and after the effective date and bonds made pursuant to such contracts.

Cross References — Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application.
2. Accrual of action.
3.-5. [Reserved for future use.]
6. Under former § 31-5-7.
7. Under former § 31-5-13.

1. Construction and application.

Statute of limitations contained in previous version of statute that guaranteed the right to file suit on payment bond within one year from date which Department of Transportation published notice of final settlement is substantive because the limitations period is "built-in" or a part of same enactment creating the right to sue on the bond; thus, the provisions could only be applied prospectively. Safeco Ins. Co. of Am. v. APAC-Mississippi, Inc., 982 F. Supp. 1225, 1997 U.S. Dist. LEXIS 17447 (S.D. Miss. 1997).

2. Accrual of action.

Bankruptcy court denied an insurance company's motion for summary judgment on a Mississippi limited liability company's ("LLC's) claim that it was entitled to payment of $135,766 under a bond the company issued to a general contractor because the general contractor did not pay the LLC for work it performed before it declared Chapter 11 bankruptcy. Documents the company filed in support of its motion did not establish conclusively that the LLC's claim for compensation was barred by Miss. Code Ann. § 31-5-53(b) because the LLC performed its last work on a construction project more than a year before it filed its adversary proceeding, and a trial was required to resolve the issue of when the LLC performed its last work. Triangle Maint. Serv., LLC v. Liberty Mut. Ins. Co. (In re Triangle Maint. Serv., LLC), 2013 Bankr. LEXIS 1407 (Bankr. N.D. Miss. Apr. 3, 2013).

Where plaintiff alleged that its action on a surety bond was timely because it met the statute of limitations by one day, based on work performed on February 18, 2011, the action was time barred because there was nothing in the evidence which adequately suggested that the work done on the 18th was significant and crucial to the construction project as a whole or that the work done on that date was anything more than remedial and/or corrective. Triangle Maint. Serv., LLC v. Liberty Mut. Ins. Co. (In re Triangle Maint. Case No. 11-15142 Serv., LLC), 2013 Bankr. LEXIS 927 (Bankr. N.D. Miss. Mar. 12, 2013).

Dismissal of claim against insurance company was affirmed since the delivery company's amended claim did not properly relate back to its amended counterclaim, pursuant to Miss. R. Civ. P. 15(c), and the insurance company was not estopped from shielding itself with the one-year statute of limitations, Miss. Code Ann. § 31-5-53 (Rev. 2000). Southern Win-Dor, Inc. v. RLI Ins. Co., 925 So. 2d 884, 2005 Miss. App. LEXIS 773 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750, 2006 Miss. LEXIS 185 (Miss. 2006).

Statute of limitations contained in previous version of statute that guaranteed the right to file suit on payment bond within one year from date which Department of Transportation published notice of final settlement is substantive because the limitations period is "built-in" or a part of same enactment creating the right to sue on the bond; thus, the provisions could only be applied prospectively. Safeco Ins. Co. of Am. v. APAC-Mississippi, Inc., 982 F. Supp. 1225, 1997 U.S. Dist. LEXIS 17447 (S.D. Miss. 1997).

3.-5. [Reserved for future use.]

6. Under former § 31-5-7.

Notice requirements (former §§ 31-5-7, 31-5-13) are jurisdictional prerequisites to suits between parallel or coprime contractors under public contracts when surety bond under former § 31-5-1 is involved. Aetna Casualty & Surety Co. v. Doleac Electric Co., 471 So. 2d 325, 1985 Miss. LEXIS 1961 (Miss. 1985).

Where notice of a final settlement with the prime contractor on a highway construction project was published by the state highway commission on November 3, 1966, and one supplier began an action on October 24, 1967 on the prime contractor's bond, a welder filed a separate suit on November 2, 1967, and the surety elected by a special plea to have all of the claimants under the prime contractor's performance bond joined as parties in the first action, the welder's claim was properly transferred and designated as an intervention dated November 2, so that the action was not subject to the one year limitation statute. Dixie Contractors, Inc. v. Ballard, 249 So. 2d 653, 1971 Miss. LEXIS 1170 (Miss. 1971).

The one-year statute of limitations provided for in this section [Code 1942, § 9016] does not begin to run until there has been publication of notice of settlement or abandonment of the contract. Transamerica Ins. Co. v. Paine Supply Co., 194 So. 2d 490, 1967 Miss. LEXIS 1409 (Miss. 1967).

The publication of notice required by this section [Code 1942, § 9016] applies both where the obligee makes final settlement and where it has determined that the contract has been abandoned. Transamerica Ins. Co. v. Paine Supply Co., 194 So. 2d 490, 1967 Miss. LEXIS 1409 (Miss. 1967).

There is no difference in the meaning of this section [Code 1942, § 9016] and that of Code 1942, § 376. Transamerica Ins. Co. v. Paine Supply Co., 194 So. 2d 490, 1967 Miss. LEXIS 1409 (Miss. 1967).

Where cause was remanded in an attachment suit against a foreign construction company to recover on a performance bond, the remand would be modified so as to permit the intervenors without prejudice to proceed against the surety on the bond where at the time the case was originally remanded the rights to proceed against a surety had not matured. Walker Constr. Co. v. Construction Machinery Corp., 223 Miss. 145, 78 So. 2d 475, 1955 Miss. LEXIS 362 (Miss. 1955).

Surety on statutory bond executed by contractor under contract with county to repair bridge, guaranteeing that contractor would promptly, properly and efficiently perform the contract, was not liable to the owner of barges rented to the county to support the bridge and which the contractor was permitted to use, or to the owner's insurer, for damages to the barges caused by negligence of the contractor's employee, for the reasons that the bond did not cover such liability and was not for the benefit of the barge owner, and that Code 1942, §§ 9014-9019, pertaining to statutory bonds in connection with contracts for public work and suits thereon, were not complied with. Continental Ins. Co. v. Harrison County, 153 F.2d 671, 1946 U.S. App. LEXIS 1963 (5th Cir. Miss. 1946).

In view of the fact that no action could be brought on a bond guarantying the performance of a construction contract until six months after the publication of notice by the principal obligee of the completion of the contract, attorney's fees and costs incurred by materialmen in a premature suit on such bond could not be recovered. Day v. Royce Kershaw, Inc., 185 Miss. 207, 187 So. 221, 1939 Miss. LEXIS 130 (Miss. 1939).

In an action on a bond, which in addition to guarantying the performance of a contract with the state highway department, provided also for all of the expense and cost and attorney's fees that might be incurred in the enforcement of the performance of the contract, or in the enforcement of the conditions and obligations of the bond, attorney's fees incurred by materialmen in inducing the state highway department, which had neglected to publish notice of the completion of the contract, to publish such notice and in bringing suit on the bond, were recoverable; and defendant's alleged tender of the principal and interest due under the contract prior to the expiration of the six months' period was ineffective. Day v. Royce Kershaw, Inc., 185 Miss. 207, 187 So. 221, 1939 Miss. LEXIS 130 (Miss. 1939).

Suit against highway contractor and his surety by subcontractors and persons who furnished materials, supplies, and labor in construction of highway held not to lie before notice of final settlement by State Highway Commission with contractor had been published. Royce Kershaw, Inc., v. State, 176 Miss. 757, 169 So. 690, 1936 Miss. LEXIS 139 (Miss. 1936).

Publication of final settlement, or abandonment of contract, held essential prerequisite of maintenance of suit by materialmen and laborers on contractor's bond. United States Fidelity & Guaranty Co. v. Plumbing Wholesale Co., 175 Miss. 675, 166 So. 529, 1936 Miss. LEXIS 31 (Miss. 1936).

Under statute providing for one suit by laborers and materialmen on contractor's bond after publication of notice of final settlement or abandonment of contract, judgment in suit by materialman held void and ineffective to bar subsequent materialmen's suit, where petition stated that publication of settlement or abandonment had not been made as required by statute. United States Fidelity & Guaranty Co. v. Plumbing Wholesale Co., 175 Miss. 675, 166 So. 529, 1936 Miss. LEXIS 31 (Miss. 1936).

Where municipal paving contract was fully performed, and city commissioners entered order setting forth balance due contractor, approving estimate, and ordering payment, there was "final settlement" of contract within statute giving materialmen action on contractor's bond, though payment had not been made. Dixie Minerals Corp. v. Dixie Asphalt Paving Co., 172 Miss. 218, 159 So. 562, 1935 Miss. LEXIS 127 (Miss. 1935).

Materialman's action on municipal paving contractor's bond which was begun more than one year after final settlement of paving contract was not barred, where no publication of final settlement was made. Dixie Minerals Corp. v. Dixie Asphalt Paving Co., 172 Miss. 218, 159 So. 562, 1935 Miss. LEXIS 127 (Miss. 1935).

Statute, providing that time for institution of laborer's or materialman's action on municipal public works contractor's bond shall not begin to run until obligee makes final settlement or determines contractor's abandonment of contract and publishes notice thereof, requires publication of final settlement before limitation begins to run. Marquette Cement Mfg. Co. v. Fidelity & Deposit Co., 173 Miss. 164, 158 So. 924, 1935 Miss. LEXIS 191 (Miss. 1935).

Proper practice in giving notice is for board of supervisors to enter order on minutes and for clerk either to sign notice published or certify that order is true and correct copy of minutes of board. Oliver Const. Co. v. Crawford, 142 Miss. 490, 107 So. 877, 1926 Miss. LEXIS 126 (Miss. 1926).

7. Under former § 31-5-13.

Notice requirements (former §§ 31-5-7, 31-5-13) are jurisdictional prerequisites to suits between parallel or coprime contractors under public contracts when surety bond under former § 31-5-1 is involved. Aetna Casualty & Surety Co. v. Doleac Electric Co., 471 So. 2d 325, 1985 Miss. LEXIS 1961 (Miss. 1985).

The publication requirement imposed by this section is jurisdictional in nature and cannot be waived by failure of the surety to plead or argue lack of jurisdiction in the lower court. Travelers Indem. Co. v. Munro Oil & Paint Co., 364 So. 2d 667, 1978 Miss. LEXIS 2229 (Miss. 1978).

Surety on statutory bond executed by contractor under contract with county to repair bridge, guaranteeing that contractor would promptly, properly and efficiently perform the contract, was not liable to the owner of barges rented to the county to support the bridge and which the contractor was permitted to use, or to the owner's insurer, for damages to the barges caused by negligence of the contractor's employee, for the reasons that the bond did not cover such liability and was not for the benefit of the barges' owner, and that Code 1942, §§ 9014-9019, pertaining to statutory bonds in connection with contracts for public work and suits thereon, were not complied with. Continental Ins. Co. v. Harrison County, 153 F.2d 671, 1946 U.S. App. LEXIS 1963 (5th Cir. Miss. 1946).

Statutory notice held sufficient without summoning all parties in interest. Union Indem. Co. v. Acme Blow Pipe & Sheet Metal Works, 150 Miss. 332, 117 So. 251, 1928 Miss. LEXIS 171 (Miss. 1928).

Failure to make publication in county where work was done held fatal error, although failure not pleaded in abatement or called to attention of court. United States Fidelity & Guaranty Co. v. Mobley, 143 Miss. 512, 108 So. 501, 1926 Miss. LEXIS 287 (Miss. 1926).

OPINIONS OF THE ATTORNEY GENERAL

Fact that there may be potential claims for personal property damage against contractor has no bearing on whether construction contract was completed to satisfaction of public body and notice of completed contract should be published. Thompson, March 3, 1994, A.G. Op. #93-1010.

If the Mississippi Department of Transportation makes a factual determination that the construction contract has been completed to its satisfaction, then publication of notice of final completion and payment on the project is required under Section 31-5-53. Robinson, August 9, 1996, A.G. Op. #96-0442.

RESEARCH REFERENCES

ALR.

Labor in examination, repair, or servicing of fixtures, machinery, or attachments in building as supporting a mechanic's lien, or extending time for filing such a lien. 51 A.L.R.3d 1087.

Construction and application of venue provisions of Miller Act (40 USCS § 270b(b)). 140 A.L.R. Fed. 615.

Am. Jur.

17 Am. Jur. 2d, Contractors' Bonds §§ 25, 73 et seq.

CJS.

72 Supp C.J.S., Public Contracts §§ 44 et seq.

Law Reviews.

Yarbrough, Rights and Remedies Under Mississippi's New Public Construction Bond Statute. 51 Miss. L. J. 351, December 1980.

Dunn, Construction Contract Claims and Litigation – Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

§ 31-5-55. Persons entitled to copies of contract and bond.

Any person supplying labor or materials for the prosecution of the work shall, upon request to the owner or obligee, or to the contractor or principal, be furnished promptly with a true and correct copy of the contract and bonds within thirty (30) days of the request or the recipient of the request shall thereafter become liable for reasonable attorney's fees and costs in any subsequent action under this section. The written request may be evidenced by any reliable means of delivery.

HISTORY: Laws, 1980, ch. 520, § 3, eff from and after April 1, 1981; Laws, 2019, ch. 346, § 3, eff from and after July 1, 2019.

Editor's Notes — This section takes effect on April 1, 1981, and applies only to contracts entered into from and after the effective date and bonds made pursuant to such contracts.

Amendment Notes — The 2019 amendment rewrote the section, which read: "Any person supplying labor or materials for the prosecution of the work shall, upon request to the obligee, be furnished with a certified copy of the contract and bonds."

RESEARCH REFERENCES

Am. Jur.

17 Am. Jur. 2d, Contractors' Bonds §§ 25, 73 et seq.

CJS.

72 Supp C.J.S., Public Contracts §§ 44 et seq.

Law Reviews.

Yarbrough, Rights and Remedies Under Mississippi's New Public Construction Bond Statute. 51 Miss. L. J. 351, December 1980.

Dunn, Construction Contract Claims and Litigation – Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

§ 31-5-57. Award of attorney's fees.

Whenever any person supplying labor or material in the prosecution of the work brings an action on such payment bond and the trial judge finds that the defense raised to such action by the contractor or surety was not reasonable, or not in good faith, or merely for the purpose of delaying payment, then the trial judge may, in his discretion, award the claimant a reasonable amount to be determined by the trial judge as claimant's attorney's fees in bringing such successful action. Likewise, if the trial judge finds that such action was brought by claimant without just cause or in bad faith, the trial judge may, in his discretion, award the contractor or surety a reasonable amount to be determined by the trial judge as attorney's fees for defending such action; provided, however, this section shall not affect the right of any person to recover attorney's fees where provided by contract or bond.

HISTORY: Laws, 1980, ch. 520, § 4, eff from and after April 1, 1981.

Editor's Notes — This section takes effect on April 1, 1981, and applies only to contracts entered into from and after the effective date and bonds made pursuant to such contracts.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Payment of attorneys' fees awarded.
3. Attorneys' fees not excessive.

1. In general.

An award of "reasonable attorney's fees" under § 31-5-57 requires proof. The court may not judicially note what is a reasonable fee and may not merely pull a figure out of thin air. Rather, the party entitled to recover a reasonable fee must furnish a evidentiary predicate therefore. Key Constructors, Inc. v. H & M Gas Co., 537 So. 2d 1318, 1989 Miss. LEXIS 8 (Miss. 1989).

Lawsuit cannot be characterized as one on payment bond, for which attorney fees and prejudgment interest might be awarded, when no obligation undertaken by virtue of bond is predicate for claim of liability and surety is not party to lawsuit, particularly where case has not been otherwise handled in accordance with § 31-5-53. Stanton & Associates, Inc. v. Bryant Constr. Co., 464 So. 2d 499, 1985 Miss. LEXIS 1916 (Miss. 1985).

2. Payment of attorneys' fees awarded.

Award of attorneys' fees based upon a quantum meruit claim in favor of the subcontractor was proper because the contractor delayed paying the subcontractor the remaining balance on its contract for no apparent reason. The contractor knew that the subcontractor was entitled to the money, but withheld the money and continued to do so; further, the contractor solicited and secured the subcontractor's efforts to persuade the agency to release the retainage, inducing the subcontractor to believe that it would get its money when in fact the contractor had already assigned the entire retainage to its bank. Tupelo Redevelopment Agency v. Gray Corp., 972 So. 2d 495, 2007 Miss. LEXIS 577 (Miss. 2007).

3. Attorneys' fees not excessive.

Amount of attorneys' fees awarded in favor of the subcontractor were not excessive because the facts surrounding and concerning that portion of the subcontractor's motion for attorneys' fees relating to setting the amount of attorney's fees justified the assessment of the fees in an amount that the trial judge found to have been reasonable and fair and that satisfied the requirements of law. The trial judge presided over a two-week trial in which numerous witnesses testified and more than 100 exhibits were received into evidence. Tupelo Redevelopment Agency v. Gray Corp., 972 So. 2d 495, 2007 Miss. LEXIS 577 (Miss. 2007).

RESEARCH REFERENCES

ALR.

Surety's liability for obligee's attorney fees under provisions of performance bond of public contractor or subcontractor. 69 A.L.R.2d 1046.

Construction of attorneys' fees provision in contractor's bond. 8 A.L.R.3d 1438.

Am. Jur.

17 Am. Jur. 2d, Contractors' Bonds §§ 131, 194.

CJS.

72 Supp C.J.S., Public Contracts § 62.

Law Reviews.

Yarbrough, Rights and Remedies Under Mississippi's New Public Construction Bond Statute. 51 Miss. L. J. 351, December 1980.

Dunn, Construction Contract Claims and Litigation – Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

CHAPTER 7.

PUBLIC PURCHASES

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Implementation of Central Purchasing by Counties. 31-7-101
Bureau of Communications. [Repealed]. 31-7-201
Timely Payment for Purchases by Public Bodies. 31-7-301
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IN GENERAL

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31-7-3. Administration of provisions of chapter; purposes.
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31-7-7. Duties and powers.
31-7-9. Purchasing regulations.
31-7-10. Lease-purchase program for state agency equipment; participation by local governments; Master Lease-Purchase Program Fund; funding of agency expenses; deposit of monies into State General Fund.
31-7-11. Purchasing practices.
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31-7-13. Bid requirements and exceptions; public auctions.
31-7-13.1. Dual-phase design-build method of construction contracting; two-phase procedure for awarding contracts; compliance with minimum building code standards; awarding stipulated fees.
31-7-13.2. Construction manager at risk method of project delivery; qualifications-based selection procedure for procuring architectural, engineering and land surveying services.
31-7-13.3. Fee for electronic submission of bids; fee charged winning bidder for participation in reverse auction.
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31-7-14.1. Division of Energy and Transportation authorized to establish energy savings incentive program.
31-7-15. Preferences for awarding contracts for commodities; procurement of products made from recovered materials; state agencies to purchase products manufactured or sold by Mississippi Industries for the Blind whenever economically feasible.
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31-7-18. Purchase of certain motor vehicles.
31-7-19. Repealed.
31-7-21. Functions of Department of Finance and Administration.
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31-7-38. Establishment of group purchasing programs by certain public hospitals and regional mental health centers.
31-7-39 through 31-7-45. Repealed.

Sec.

31-7-47. Preference to resident contractors.

31-7-48. Repealed.

31-7-49. Purchases under contract.

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31-7-59. Purchase by municipalities from United States General Services Administration.

31-7-61. Governmental purchases of foreign beef; prohibition against.

31-7-63. Governmental purchases of foreign beef; penalties.

31-7-65. Governmental purchases of foreign beef; commissioner of agriculture and commerce to give notice.

31-7-67 through 31-7-71. Repealed.

31-7-73. Authority of state agencies to contract for energy efficiency services.

§ 31-7-1. Definitions.

The following terms are defined for the purposes of this chapter to have the following meanings:

(a) "Agency" means any state board, commission, committee, council, university, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, university, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof; except a charter school authorized by the Mississippi Charter School Authorizer Board; and except the Mississippi State Port Authority; except the Mississippi School of the Arts (MSA) established in Section 37-140-1 et seq. for the sole purpose of the application of the term "agency" as it pertains to the Public Procurement Review Board's powers and responsibilities as defined in Section 27-104-7(2)(a), but without application to the use of the term within this chapter, effective July 1, 2020; and except the Mississippi School for the Blind and the Mississippi School for the Deaf (MSBD) for the sole purpose of the application of the term "agency" as it pertains to the Public Procurement Review Board's powers and responsibilities as defined in Section 27-104-7(2)(a), but without application to the use of the term within this chapter, effective July 1, 2021. An academic medical center or health sciences school as defined in Section 37-115-50 is not an "agency" for those purchases of commodities as defined in this section that are used for clinical purposes and (i) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease, and (ii) medical devices, biological, drugs and radiation emitting devices as defined by the United States Food and Drug Administration.

(b) "Governing authority" means boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, Mississippi State Port Authority, commissioners and boards of trustees of any public hospitals, boards of trustees of public library systems, district attorneys, school attendance officers and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivisions thereof, including commissions, boards and agencies created or operated under the authority of any county or municipality of this state. The term "governing authority" shall not include economic development authorities supported in part by private funds, or commissions appointed to hold title to and oversee the development and management of lands and buildings which are donated by private individuals to the public for the use and benefit of the community and which are supported in part by private funds. The term "governing authority" also shall not include the governing board of a charter school. The term "governing authority" also shall not include the Mississippi School of the Arts established in Section 37-140-1 et seq., for the sole purpose of the application of the term "agency" as it pertains to the Public Procurement Review Board's powers and responsibilities as defined in Section 27-104-7(2)(a), but without application to the use of the term within this chapter, effective July 1, 2020. The term "governing authority" also shall not include the Mississippi School for the Blind and the Mississippi School for the Deaf (MSBD) for the sole purpose of the application of the term "governing authority" as it pertains to the Public Procurement Review Board's powers and responsibilities as defined in Section 27-104-7(2)(a), but without application to the use of the term within this chapter, effective July 1, 2021.

(c) "Purchasing agent" means any administrator, superintendent, purchase clerk or other chief officer so designated having general or special authority to negotiate for and make private contract for or purchase for any governing authority or agency, including issue purchase orders, invitations for bid, requests for proposals, and receive and accept bids.

(d) "Public funds" means and includes any appropriated funds, special funds, fees or any other emoluments received by an agency or governing authority.

(e) "Commodities" means and includes the various commodities, goods, merchandise, furniture, equipment, automotive equipment of every kind, and other personal property purchased by the agencies of the state and governing authorities, but not commodities purchased for resale or raw materials converted into products for resale.

(i) "Equipment" shall be construed to include: automobiles, trucks, tractors, office appliances and all other equipment of every kind and description.

(ii) "Furniture" shall be construed to include: desks, chairs, tables, seats, filing cabinets, bookcases and all other items of a similar nature as well as dormitory furniture, appliances, carpets and all other items of personal property generally referred to as home, office or school furniture.

(f) "Emergency" means any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.

(g) "Construction" means the process of building, altering, improving, renovating or demolishing a public structure, public building, or other public real property. It does not include routine operation, routine repair or regularly scheduled maintenance of existing public structures, public buildings or other public real property.

(h) "Purchase" means buying, renting, leasing or otherwise acquiring.

(i) "Certified purchasing office" means any purchasing office in which fifty percent (50%) or more of the purchasing agents hold a certification from the Universal Public Purchasing Certification Council or other nationally recognized purchasing certification, and in which, in the case of a state agency purchasing office, in addition to the national certification, one hundred percent (100%) of the purchasing officials hold a certification from the State of Mississippi's Basic or Advanced Purchasing Certification Program.

(j) "Certified Mississippi Purchasing Agent" means a state agency purchasing official who holds a certification from the Mississippi Basic Purchasing Certification Program as established by the Office of Purchasing, Travel and Fleet Management.

(k) "Certified Mississippi Procurement Manager" means a state agency purchasing official who holds a certification from the Mississippi Advanced Purchasing Certification Program as established by the Office of Purchasing, Travel and Fleet Management.

HISTORY: Codes, 1942, §§ 9024-01, 9024-10, 9024.5; Laws, 1958, ch. 480, §§ 1-4; Laws, 1962, ch. 497, §§ 1, 13; Laws, 1968, ch. 506, § 21; Laws, 1980, ch. 440, § 1; Laws, 1981, ch. 306, § 1; Laws, 1984, ch. 488, § 152; Laws, 1985, ch. 525, § 13; Laws, 1988, ch. 589, § 22; Laws, 1988 Ex Sess, ch. 14, § 63; Laws, 1990, ch. 585, § 1; Laws, 1993, ch. 556, § 1; Laws, 1996, ch. 404, § 2; Laws, 1999, ch. 335, § 1; Laws, 2000, ch. 593, § 2; Laws, 2003, ch. 539, § 3; Laws, 2004, ch. 390, § 1; Laws, 2012, ch. 485, § 2; Laws, 2013, ch. 362, § 1; Laws, 2013, ch. 497, § 35; Laws, 2016, ch. 330, § 1; Laws, 2017, ch. 367, § 1; Laws, 2017, ch. 398, § 4, eff from and after July 1, 2017; Laws, 2019, ch. 432, § 4, eff from and after July 1, 2019; Laws, 2020, ch. 369, § 5, eff from and after July 1, 2020.

Joint Legislative Committee Note — Section 35 of ch. 497, Laws of 2013, effective from and after July 1, 2013 (approved April 17, 2013), amended this section. Section 1 of ch. 362, Laws of 2013, effective from and after July 1, 2013 (approved March 18, 2013), also amended this section. As set out above, this section reflects the language of Section 35 of ch. 497, Laws of 2013, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date supersedes all other amendments to the same section approved on an earlier date.

Section 1 of Chapter 367, Laws of 2017, effective from and after passage (approved March 20, 2017), amended this section. Section 4 of Chapter 398, Laws of 2017, effective from and after July 1, 2017 (approved March 28, 2017), also amended this section. As set out above, this section reflects the language of Section 4 of Chapter 398, Laws of 2017, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Editor's Notes — Laws of 2017, ch. 398, § 6, provides:

"SECTION 6. The provisions of this act are severable. If any part is declared invalid or unconstitutional, that declaration shall not affect the part which remains."

Amendment Notes — The 2019 amendment added "and except the Mississippi School of the Arts (MSA) established in Section 37-140-1 et seq." at the end of the first sentence of (1); and added the last sentence of (b).

The 2020 amendment, in the first sentence of (a), added "for the sole purpose of the application…effective July 1, 2021"; and in (b), in the fourth sentence, added "for the sole purpose of the application…July 1, 2020," and added the last sentence.

Cross References — Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Application of the definition of governing authority, defined in this section, to the duties and responsibilities of a county administrator, see § 19-4-7.

Applicability of this chapter to contracts for construction or improvement of industrial sites within economic development districts, see § 19-5-99. Amendment Note.-- The 2020 amendment, in the first sentence of (a), added "for the sole purpose of the application…effective July 1, 2021"; and in (b), in the fourth sentence, added "for the sole purpose of the application…July 1, 2020," and added the last sentence.

Acquisition of equipment for or contracts for reproduction of records pertaining to public utilities, see § 21-27-95.

Authority of commission of budget and accounting over purchase of automobiles for state officers and employees, see § 25-1-77.

Applicability of public purchases law to central data processing authority [Mississippi Department of Information Technology Services], see § 25-53-25.

Acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 st seq.

Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Public procurement review board, see § 27-104-7.

Lease-purchase program for state agency equipment, see § 31-7-10.

Authority of state agencies to contract for energy efficiency services, see § 31-7-73.

Acquisition of public buildings, facilities, and equipment through rental contracts, see §§ 31-8-1 et seq.

Mississippi Charter School Authorizer Board, generally, see § 37-28-1 et seq.

Purchases and contracts by boards of trustees of school districts and county boards of education, see § 37-39-1.

Purchases for state penitentiary, see § 47-5-79.

Definition of "commodities" as used in the Mississippi Minority Business Enterprise Act, see § 57-69-3.

Bonds on contracts by or on behalf of the Mississippi Transportation Commission, see § 65-1-85.

JUDICIAL DECISIONS

1. In general.

Administration of public purchasing, administration of state employee's group insurance program, and authority to approve rules adopted by the State Auditor for establishing a merit system for his employees, are administrative functions within the prerogative of the executive department, and thus, named legislators could not constitutionally perform any of those functions because they properly belonged to the executive department; moreover, the statutes vesting those powers in members of the legislature are unconstitutional. Alexander v. State, 441 So. 2d 1329, 1983 Miss. LEXIS 3007 (Miss. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Public purchasing laws do not generally apply to private corporations. Monty, May 16, 1991, A.G. Op. #91-0337.

Under state law, the general rule is that public purchasing contracts may be awarded only on the basis of lowest and best bid. Brown, Oct. 14, 1991, A.G. Op. #91-0792.

Only where provisions for local preference are expressly made by legislative action can a city award preference to a local bidder. Brown, Oct. 14, 1991, A.G. Op. #91-0792.

There is no authority within the provisions of the public purchases law, codified in this chapter, for a county to pay a "restocking fee" for items ordered and delivered but returned due to no fault on the part of the vendor. Whether the vendor accepts the return of such items would be at the discretion of the vendor. Haque, March 15, 1995, A.G. Op. #95-0092.

The controlling statute a school board must follow to sell sand, gravel, fill dirt, or clay from 16th section school trust land is Section 29-3-99 and not this chapter. Section 29-3-99 is a specific statute which details the competitive bid requirements on sixteenth section lands for the sale of sands, gravel, fill dirt or clay. This chapter is of a more general nature which deal with public purchasing requirements. McWhorter, November 27, 1995, A.G. Op. #95-0769.

If proposed contractual changes are within the scope of the construction contract, then the procedure authorized by Section 31-7-13(g) could be utilized. However, if the contract is a separate one for the purchase of commodities as defined by subsection (e) of this section, then the change order procedure could not be used. Wallace, August 30, 1996, A.G. Op. #96-0569.

Since the Corinth-Alcorn County Emergency Management Agency was created under the authority of Alcorn County and the City of Corinth and receives public funds from those political subdivisions, the agency must follow and comply with the public purchasing laws set out in this chapter, which includes following the state bidding procedures for procurement of equipment and property. Claunch, October 4, 1996, A.G. Op. #96-0548.

An economic development district, not being an economic development authority, is subject to the purchase laws of the State of Mississippi; trustees of a development district control funds collected for support of the district and may upon a majority vote approve properly submitted bills for payment; funds must be placed in the county depository at which the development district may have its own separate account; and there is no authority for a development district to provide meals for its appointed trustees at their meetings. Munn, January 9, 1998, A.G. Op. #97-0816.

A non-profit Mississippi corporation organized and existing for the purpose of providing public ambulance service is not a political subdivision for purposes of this chapter and is exempt therefrom. Oliver, April 10, 1998, A.G. Op. #98-0183.

Economic development districts created pursuant to § 19-5-99 are subject to the public purchasing laws codified at this chapter. Walley, March 19, 1999, A.G. Op. #99-0124.

This section and § 31-7-13 do not control in the purchase of personal property as part of the acquisition of an existing physical therapy and rehabilitation center. Williams, May 14, 1999, A.G. Op. #99-0215.

The term "governing authority" generally refers to any board that governs a political subdivision or instrumentality of the state; this includes boards of supervisors, district school boards, boards of aldermen or city councils, and other governing boards of commissions, districts and agencies. Bryant, May 5, 2000, A.G. Op. #2000-0185.

A contract with a city under which a company would provide the manpower, equipment, and expertise necessary to efficiently recover from a hurricane or other disaster was subject to requirements for advertising and taking bids since only contracts that are made during the time of an emergency are exempt from state laws governing construction, solid waste contracts and purchasing. Mitchell, Oct. 6, 2000, A.G. Op. #2000-0579.

The public purchase laws are not applicable to the maintenance of a beach, consisting of picking up garbage, running sand sweepers to sift rubbish from the sand, and occasionally setting out plants. Meadows, Oct. 26, 2001, A.G. Op. #01-0663.

Motor vehicles and equipment purchased at public auction by those entities which come under the public purchasing laws must be offered by a state agency or governing authority of the state of Mississippi. Entrekin, Apr. 12, 2002, A.G. Op. #02-0169.

The Port Authority does not have to require a certificate of responsibility for demolition contractors to bid on public projects; however, in its discretion, it may require contractors to have a certificate of responsibility prior to bidding on such projects. Hunter, May 3, 2002, A.G. Op. #02-0207.

The Mississippi Technology Alliance, Inc., a private, not for profit corporation, is not subject to the procurement requirements regarding the letting of a construction contract as provided by the public purchasing statutes. Anderson, Feb. 28, 2003, A.G. Op. #03-0034.

If a county board of supervisors accepted a bid on the provision of limestone with no obligation to make a minimum purchase during the stated term, then it can purchase essentially the same commodity from another vendor at a lower price, as long as such purchase is made in accordance with procedures found in Section 31-7-1 et seq. Mangum, Apr. 1, 2005, A.G. Op. 05-0112.

The Mississippi Bond Refunding Act provides separate authority for a school district to issue refunding bonds to refinance its Mississippi Adequate Education Program Act bonds. Bounds, Nov. 14, 2005, A.G. Op. 05-0530.

A public entity may not enter into a construction management at-risk contract. Banks, May 19, 2006, A.G. Op. 06-0165.

§ 31-7-3. Administration of provisions of chapter; purposes.

The Department of Finance and Administration shall administer the provisions of this chapter.

The purposes or aims of the Department of Finance and Administration in carrying out said provisions shall be to coordinate and promote efficiency and economy in the purchase of commodities by the agencies of the state.

HISTORY: Codes, 1942, §§ 9024-02, 9024-03; Laws, 1962, ch. 497, §§ 2, 3; Laws, 1980, ch. 440, § 2; Laws, 1984, ch. 488, § 153; Laws, 1985, ch. 525, § 14; Laws, 2000, ch. 593, § 3, eff from and after passage (approved May 20, 2000).

Cross References — Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Work performed by contract with state or local agency in connection with relief under Disaster Assistance Act of 1993 as subject to provisions of this chapter, see § 33-15-315.

OPINIONS OF THE ATTORNEY GENERAL

Based on Sections 31-27-3, 31-27-5, 31-27-11, 31-27-13, 31-27-17 and the intent and policy of the Refinancing Act as announced by the Legislature, the certificates evidencing the debt of the District on the building constructed under the Lease-Purchase Act are bonds within the meaning of the statute and may be refunded by the issuance of general obligation refunding bonds. Piazza, October 14, 1996, A.G. Op. #96-0707.

§ 31-7-5. Administrative rules and regulations.

The Department of Finance and Administration shall prescribe rules and regulations governing the manner in which the authority and duties granted to it by law may be carried out. It shall employ suitable and competent personnel, necessary to carry out its purposes. The Department of Finance and Administration may establish an Office of Purchasing, Travel and Fleet Management and employ a competent person as Director of the Office of Purchasing, Travel and Fleet Management who shall be nonstate service and paid a salary as determined by the Executive Director of the Department of Finance and Administration with the approval of the State Personnel Board.

HISTORY: Codes, 1942, § 9024-04; Laws, 1962, ch. 497, § 4; Laws, 2000, ch. 593, § 4; Laws, 2006, ch. 537, § 6; Laws, 2007, ch. 319, § 1, eff from and after July 1, 2007.

Cross References — Nonstate service defined, see § 25-9-107.

JUDICIAL DECISIONS

1. In general.

The authority to supervise the procurement activities of all state agencies, departments and institutions is vested in the State Commission of Budget and Accounting. Board of Trustees v. Peoples Bank of Mississippi, N.A., 538 So. 2d 361, 1989 Miss. LEXIS 13 (Miss. 1989).

OPINIONS OF THE ATTORNEY GENERAL

Based on Sections 31-27-3, 31-27-5, 31-27-11, 31-27-13, 31-27-17 and the intent and policy of the Refinancing Act as announced by the Legislature, the certificates evidencing the debt of the District on the building constructed under the Lease-Purchase Act are bonds within the meaning of the statute and may be refunded by the issuance of general obligation refunding bonds. Piazza, October 14, 1996, A.G. Op. #96-0707.

§ 31-7-7. Duties and powers.

Through its director and other supervisory personnel and, upon its request, through the agencies of the state, the Office of General Services shall supervise the performance of the following duties imposed upon it by this chapter:

(a) A study of the purchases of commodities by the agencies of the state; the compilation, exchange and coordination of information concerning same; and the distribution of such information to the agencies and governing authorities requesting same.

(b) The planning and coordination of purchases in volume for the agencies in order to take advantage of and secure the economies possible by volume purchasing; the arrangement of agreements between agencies and between governing authorities whereby one may make a purchase or purchases for the other or whereby an agency may make a purchase for a governing authority; the arrangement of agreements whereby purchases of commodities can be made between an agency and another agency or governing authority at a fair price, less depreciated value; the negotiations and execution of purchasing agreements and contracts through and under which the Office of General Services may require state agencies to purchase; and the obtaining or establishment of methods for obtaining of competitive bid prices upon which any agency of the state may purchase at the price approved by the Office of General Services.

(c) The arrangement of provisions in purchase contracts of the state, or any agency, providing that the same price for which a commodity is available to an agency, may also, during the period of time provided therein, be available to any governing authority.

HISTORY: Codes, 1942, § 9024-05; Laws, 1962, ch. 497, § 5; Laws, 1980, ch. 440, § 3; Laws, 1983, ch. 330, § 1; Laws, 1984, ch. 488, § 154; Laws, 1985, ch. 525, § 15, eff from and after July 1, 1985.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Purchasing regulations, see § 31-7-9.

Restrictions on governmental purchases of foreign beef, see §§ 31-7-61 through 31-7-65.

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

OPINIONS OF THE ATTORNEY GENERAL

There is no authority for agency to make donations of property or funds to local districts; rather, transaction must be at fair price, less depreciation as mandated by subsection (b) of this section. Buffum, June 17, 1993, A.G. Op. #93-0415.

The Department of Finance and Administration may adopt as its own approved purchase agreements the cooperative agreements that have been developed by other states and local governments. Stringer, May 5, 2006, A.G. Op. 06-0159.

§ 31-7-9. Purchasing regulations.

(1)(a) The Office of Purchasing, Travel and Fleet Management shall adopt purchasing regulations governing the purchase by any agency of any commodity or commodities and establishing standards and specifications for a commodity or commodities and the maximum fair prices of a commodity or commodities, subject to the approval of the Public Procurement Review Board. It shall have the power to amend, add to or eliminate purchasing regulations. The adoption of, amendment, addition to or elimination of purchasing regulations shall be based upon a determination by the Office of Purchasing, Travel and Fleet Management with the approval of the Public Procurement Review Board, that such action is reasonable and practicable and advantageous to promote efficiency and economy in the purchase of commodities by the agencies of the state. Upon the adoption of any purchasing regulation, or an amendment, addition or elimination therein, copies of same shall be furnished to the State Auditor and to all agencies affected thereby. Thereafter, and except as otherwise may be provided in subsection (2) of this section, no agency of the state shall purchase any commodities covered by existing purchasing regulations unless such commodities be in conformity with the standards and specifications set forth in the purchasing regulations and unless the price thereof does not exceed the maximum fair price established by such purchasing regulations. The Office of Purchasing, Travel and Fleet Management shall furnish to any county or municipality or other local public agency of the state requesting same, copies of purchasing regulations adopted by the Office of Purchasing, Travel and Fleet Management and any amendments, changes or eliminations of same that may be made from time to time.

(b) The Office of Purchasing, Travel and Fleet Management may adopt purchasing regulations governing the use of credit cards, procurement cards and purchasing club membership cards to be used by state agencies, governing authorities of counties and municipalities, school districts and the Chickasawhay Natural Gas District. Use of the cards shall be in strict compliance with the regulations promulgated by the office. Any amounts due on the cards shall incur interest charges as set forth in Section 31-7-305 and shall not be considered debt.

(c) Pursuant to the provision of Section 37-61-33(3), the Office of Purchasing, Travel and Fleet Management of the Department of Finance and Administration is authorized to issue procurement cards to all public school district classroom teachers and other necessary direct support personnel at the beginning of the school year for the purchase of instructional supplies using Educational Enhancement Funds. The cards will be issued in equal amounts per teacher determined by the total number of qualifying personnel and the then current state appropriation for classroom instructional supplies under the Education Enhancement Fund. All purchases shall be in accordance with state law and teachers are responsible for verification of capital asset requirements when pooling monies to purchase equipment. The cards will expire on a predetermined date at the end of each school year. All unexpended amounts will be carried forward, to be combined with the following year's instructional supply fund allocation, and reallocated for the following year. The Department of Finance and Administration is authorized to loan any start-up funds at the beginning of the school year to fund this procurement system for instructional supplies with loan repayment being made from sales tax receipts earmarked for the Education Enhancement Fund.

(d) In a sale of goods or services, the seller shall not impose a surcharge on a buyer who uses a state-issued credit card, procurement card, travel card, or fuel card. The Department of Finance and Administration shall have exclusive jurisdiction to enforce and adopt rules relating to this paragraph. Any rules adopted under this paragraph shall be consistent with federal laws and regulations governing credit card transactions described by this paragraph. This paragraph does not create a cause of action against an individual for a violation of this paragraph.

(2) The Office of Purchasing, Travel and Fleet Management shall adopt, subject to the approval of the Public Procurement Review Board, purchasing regulations governing the purchase of unmarked vehicles to be used by the Bureau of Narcotics and Department of Public Safety in official investigations pursuant to Section 25-1-87. Such regulations shall ensure that purchases of such vehicles shall be at a fair price and shall take into consideration the peculiar needs of the Bureau of Narcotics and Department of Public Safety in undercover operations.

(3) The Office of Purchasing, Travel and Fleet Management shall adopt, subject to the approval of the Public Procurement Review Board, regulations governing the certification process for certified purchasing offices, including the Mississippi Purchasing Certification Program, which shall be required of all purchasing agents at state agencies. Such regulations shall require entities desiring to be classified as certified purchasing offices to submit applications and applicable documents on an annual basis, and in the case of a state agency purchasing office, to have one hundred percent (100%) participation and completion by purchasing agents in the Mississippi Purchasing Certification Program, at which time the Office of Purchasing, Travel and Fleet Management may provide the governing entity with a certification valid for one (1) year from the date of issuance. The Office of Purchasing, Travel and Fleet Management shall set a fee in an amount that recovers its costs to administer the Mississippi Purchasing Certification Program, which shall be assessed to the participating state agencies.

(4) The Office of Purchasing, Travel and Fleet Management shall adopt purchasing regulations authorizing rural water associations to purchase at the state contract price afforded to agencies and governing authorities under this chapter.

HISTORY: Codes, 1942, § 9024-06; Laws, 1962, ch. 497, § 6; Laws, 1984, ch. 488, § 155; Laws, 1985, ch. 525, § 16; Laws, 1988 Ex Sess, ch. 14, § 71; Laws, 1989, ch. 394, § 1; Laws, 2000, ch. 593, § 5; Laws, 2002, ch. 316, § 1; Laws, 2003, ch. 539, § 4; Laws, 2004, ch. 562, § 2; Laws, 2006, ch. 537, § 7; Laws, 2012, ch. 543, § 4; Laws, 2013, ch. 362, § 2; Laws, 2013, ch. 394, § 1; Laws, 2016, ch. 330, § 2, eff from and after July 1, 2016; Laws, 2020, ch. 366, § 1, eff from and after July 1, 2020.

Joint Legislative Committee Note — Section 2 of ch. 362, Laws of 2013, effective from and after July 1, 2013 (approved March 18, 2013), amended this section. Section 1 of ch. 394, Laws of 2013, effective from and after July 1, 2013 (approved March 20, 2013), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee ratified the integration of these amendments as consistent with the legislative intent at the August 1, 2013, meeting of the Committee.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Amendment Notes — The 2020 amendment added (4).

Cross References — Creation of the public procurement review board, see § 27-104-7.

Purchases of unmarked vehicles made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to this section excepted from the provisions of § 31-7-12, see § 31-7-12.

Purchases of unmarked vehicles, when made in accordance with purchasing regulations pursuant to this section exempt from bidding requirements, see § 31-7-13.

Purchases by hospitals or regional mental health centers participating in group purchasing programs of supplies; commodities and equipment through such programs are exempt from the provisions of this section and §§ 31-7-10, 31-7-11, 31-7-12 and 31-7-13, see § 31-7-38.

Lease-purchase program for state agency equipment, see § 37-7-10.

Bidding and contracting procedures under Mississippi Superconducting Super Collider Act, see § 57-67-37.

Bonds on contracts by or on behalf of the Mississippi Transportation Commission, see § 65-1-85.

OPINIONS OF THE ATTORNEY GENERAL

The Medical Center would not be exempt from the provisions of this section and § 31-7-11 when participating in a group purchase program, since Section 31-7-38 does not so provide. Ranck, October 11, 1996, A.G. Op. #96-0692.

Section 31-7-38 does not exempt hospital group purchase programs from the provisions and requirements of this section and § 31-7-11. These sections enumerate the duties and responsibilities of the Department of Finance and Administration with regard to purchases by state agencies, including University Medical Center. Ranck, November 8, 1996, A.G. Op. #96-0755.

A city is authorized to expend public funds to pay a fee to obtain a Sam's Club card as long as the city strictly complies with the regulations promulgated by the Office of Purchasing and Travel. Thaggard, Jan. 28, 2005, A.G. Op. 05-0022.

§ 31-7-10. Lease-purchase program for state agency equipment; participation by local governments; Master Lease-Purchase Program Fund; funding of agency expenses; deposit of monies into State General Fund.

(1) For the purposes of this section, the term "equipment" shall mean equipment, furniture, and if applicable, associated software and other applicable direct costs associated with the acquisition. In addition to its other powers and duties, the Department of Finance and Administration shall have the authority to develop a master lease-purchase program and, pursuant to that program, shall have the authority to execute on behalf of the state master lease-purchase agreements for equipment to be used by an agency, as provided in this section. Each agency electing to acquire equipment by a lease-purchase agreement shall participate in the Department of Finance and Administration's master lease-purchase program, unless the Department of Finance and Administration makes a determination that such equipment cannot be obtained under the program or unless the equipment can be obtained elsewhere at an overall cost lower than that for which the equipment can be obtained under the program. Such lease-purchase agreements may include the refinancing or consolidation, or both, of any state agency lease-purchase agreements entered into after June 30, 1990.

(2) All funds designated by agencies for procurement of equipment and financing thereof under the master lease-purchase program shall be paid into a special fund created in the State Treasury known as the "Master Lease-Purchase Program Fund," which shall be used by the Department of Finance and Administration for payment to the lessors for equipment acquired under master lease-purchase agreements.

(3) Upon final approval of an appropriation bill, each agency shall submit to the Public Procurement Review Board a schedule of proposed equipment acquisitions for the master lease-purchase program. Upon approval of an equipment schedule by the Public Procurement Review Board with the advice of the Department of Information Technology Services, the Office of Purchasing, Travel and Fleet Management, and the Division of Energy and Transportation of the Mississippi Development Authority as it pertains to energy efficient climate control systems, the Public Procurement Review Board shall forward a copy of the equipment schedule to the Department of Finance and Administration.

(4) The level of lease-purchase debt recommended by the Department of Finance and Administration shall be subject to approval by the State Bond Commission. After such approval, the Department of Finance and Administration shall be authorized to advertise and solicit written competitive proposals for a lessor, who will purchase the equipment pursuant to bid awards made by the using agency under a given category and then transfer the equipment to the Department of Finance and Administration as lessee, pursuant to a master lease-purchase agreement.

The Department of Finance and Administration shall select the successful proposer for the financing of equipment under the master lease-purchase program with the approval of the State Bond Commission.

(5) Each master lease-purchase agreement, and any subsequent amendments, shall include such terms and conditions as the State Bond Commission shall determine to be appropriate and in the public interest, and may include any covenants deemed necessary or desirable to protect the interests of the lessor, including, but not limited to, provisions setting forth the interest rate (or method for computing interest rates) for financing pursuant to such agreement, covenants concerning application of payments and funds held in the Master Lease-Purchase Program Fund, covenants to maintain casualty insurance with respect to equipment subject to the master lease-purchase agreement (and all state agencies are specifically authorized to purchase any insurance required by a master lease-purchase agreement) and covenants precluding or limiting the right of the lessee or user to acquire equipment within a specified time (not to exceed five (5) years) after cancellation on the basis of a failure to appropriate funds for payment of amounts due under a lease-purchase agreement covering comparable equipment. The State Bond Commission shall transmit copies of each such master lease-purchase agreement and each such amendment to the Joint Legislative Budget Committee. To the extent provided in any master lease-purchase agreement, title to equipment leased pursuant thereto shall be deemed to be vested in the state or the user of the equipment (as specified in such master lease-purchase agreement), subject to default under or termination of such master lease-purchase agreement.

A master lease-purchase agreement may provide for payment by the lessor to the lessee of the purchase price of the equipment to be acquired pursuant thereto prior to the date on which payment is due to the vendor for such equipment and that the lease payments by the lessee shall commence as though the equipment had been provided on the date of payment. If the lessee, or lessee's escrow agent, has sufficient funds for payment of equipment purchases prior to payment due date to vendor of equipment, such funds shall be held or utilized on an as-needed basis for payment of equipment purchases either by the State Treasurer (in which event the master lease-purchase agreement may include provisions concerning the holding of such funds, the creation of a security interest for the benefit of the lessor in such funds until disbursed and other appropriate provisions approved by the Bond Commission) or by a corporate trustee selected by the Department of Finance and Administration (in which event the Department of Finance and Administration shall have the authority to enter into an agreement with such a corporate trustee containing terms and conditions approved by the Bond Commission). Earnings on any amount paid by the lessor prior to the acquisition of the equipment may be used to make lease payments under the master lease-purchase agreement or applied to pay costs and expenses incurred in connection with such lease-purchase agreement. In such event, the equipment-use agreements with the user agency may provide for lease payments to commence upon the date of payment by the lessor and may also provide for a credit against such payments to the extent that investment receipts from investment of the purchase price are to be used to make lease-purchase payments.

(6) The annual rate of interest paid under any lease-purchase agreement authorized under this section shall not exceed the maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101.

(7) The Department of Finance and Administration shall furnish the equipment to the various agencies, also known as the user, pursuant to an equipment-use agreement developed by the Department of Finance and Administration. Such agreements shall require that all monthly payments due from such agency be paid, transferred or allocated into the Master Lease-Purchase Program Fund pursuant to a schedule established by the Department of Finance and Administration. In the event such sums are not paid by the defined payment period, the Executive Director of the Department of Finance and Administration shall issue a requisition for a warrant to draw such amount as may be due from any funds appropriated for the use of the agency which has failed to make the payment as agreed.

(8) All master lease-purchase agreements executed under the authority of this section shall contain the following annual allocation dependency clause or an annual allocation dependency clause which is substantially equivalent thereto: "The continuation of each equipment schedule to this agreement is contingent in whole or in part upon the appropriation of funds by the Legislature to make the lease-purchase payments required under such equipment schedule. If the Legislature fails to appropriate sufficient funds to provide for the continuation of the lease-purchase payments under any such equipment schedule, then the obligations of the lessee and of the agency to make such lease-purchase payments and the corresponding provisions of any such equipment schedule to this agreement shall terminate on the last day of the fiscal year for which appropriations were made."

(9) The maximum lease term for any equipment acquired under the master lease-purchase program shall not exceed the useful life of such equipment as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and Regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. The Department of Finance and Administration shall be deemed to have met the requirements of this subsection if the term of a master lease-purchase agreement does not exceed the weighted average useful life of all equipment covered by such agreement and the schedules thereto as determined by the Department of Finance and Administration. For purposes of this subsection, the "term of a master lease-purchase agreement" shall be the weighted average maturity of all principal payments to be made under such master lease-purchase agreement and all schedules thereto.

(10) Interest paid on any master lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation. All equip-

ment, and the purchase thereof by any lessor, acquired under the master lease-purchase program and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes.

(11) The Governor, in his annual executive budget to the Legislature, shall recommend appropriations sufficient to provide funds to pay all amounts due and payable during the applicable fiscal year under master lease-purchase agreements entered into pursuant to this section.

(12) Any master lease-purchase agreement reciting in substance that such agreement has been entered into pursuant to this section shall be conclusively deemed to have been entered into in accordance with all of the provisions and conditions set forth in this section. Any defect or irregularity arising with respect to procedures applicable to the acquisition of any equipment shall not invalidate or otherwise limit the obligation of the Department of Finance and Administration, or the state or any agency of the state, under any master lease-purchase agreement or any equipment-use agreement.

(13) There shall be maintained by the Department of Finance and Administration, with respect to each master lease-purchase agreement, an itemized statement of the cash price, interest rates, interest costs, commissions, debt service schedules and all other costs and expenses paid by the state incident to the lease-purchase of equipment under such agreement.

(14) Lease-purchase agreements entered into by the Board of Trustees of State Institutions of Higher Learning pursuant to the authority of Section 37-101-413 or by any other agency which has specific statutory authority other than pursuant to Section 31-7-13(e) to acquire equipment by lease-purchase shall not be made pursuant to the master lease-purchase program under this section, unless the Board of Trustees of State Institutions of Higher Learning or such other agency elects to participate as to part or all of its lease-purchase acquisitions in the master lease-purchase program pursuant to this section.

(15) The Department of Finance and Administration may develop a master lease-purchase program for school districts and, pursuant to that program, may execute on behalf of the school districts master lease-purchase agreements for equipment to be used by the school districts. The form and structure of this program shall be substantially the same as set forth in this section for the master lease-purchase program for state agencies. If sums due from a school district under the master lease-purchase program are not paid by the expiration of the defined payment period, the Executive Director of the Department of Finance and Administration may withhold such amount that is due from the school district's minimum education or adequate education program fund allotments.

(16) The Department of Finance and Administration may develop a master lease-purchase program for community and junior college districts and, pursuant to that program, may execute on behalf of the community and junior college districts master lease-purchase agreements for equipment to be used by the community and junior college districts. The form and structure of this program must be substantially the same as set forth in this section for the master lease-purchase program for state agencies. If sums due from a

community or junior college district under the master lease-purchase program are not paid by the expiration of the defined payment period, the Executive Director of the Department of Finance and Administration may withhold an amount equal to the amount due under the program from any funds allocated for that community or junior college district in the state appropriations for the use and support of the community and junior colleges.

(17) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(18) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Laws, 1990, ch. 545, § 1; Laws, 1990, 1st Ex Sess, ch. 51, § 1; Laws, 1991, ch. 424 § 1; Laws, 1992, ch. 571 § 2; Laws, 2000, ch. 566, § 1; Laws, 2000, ch. 593, § 6; Laws, 2002, ch. 409, § 1; Laws, 2006, ch. 537, § 8; Laws, 2016, ch. 459, § 16, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 1 of ch. 566, Laws of 2000, effective from and after July 1, 2000, amended this section. Section 6 of ch. 593, Laws of 2000, effective from and after its passage (approved May 20, 2000), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the Legislative intent at the June 29, 2000 meeting of the Committee.

Editor's Notes — Laws of 1990, 1st Extraordinary Session, ch. 51, § 3, effective June 30, 1990, provides as follows:

"SECTION 3. Any lease-purchase agreement by any agency entered into after April 4, 1990, and before the effective date of this act [June 30, 1990], which was approved in writing by the Department of Finance and Administration, shall be a valid and binding obligation of such agency, in accordance with the terms of such lease-purchase agreement, to the same extent as any lease-purchase agreement entered into pursuant to the provisions of Section 31-7-13(e) as amended by this act. Any lease-purchase agreement by any governing authority entered into after April 4, 1990, and before the effective date of this act [June 30, 1990], which is in compliance with Section 31-7-13(e), as amended by this act, shall be a valid and binding obligation of such governing authority, in accordance with the terms of such lease-purchase agreement, to the same extent as any lease-purchase agreement entered into pursuant to the provisions of Section 31-7-13(e) as amended by this act."

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References — Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Financing of all contracts for lease-purchase of equipment and furniture by agencies to be made pursuant to this section, see § 31-7-13.

Under bidding provisions, requirement that state agencies finance all contracts for lease-purchase of equipment and furniture pursuant to master lease-purchase agreement, see § 31-7-13.

Purchases by hospitals or regional mental health centers participating in group purchasing programs of supplies; commodities and equipment through such programs are exempt from provisions of this section and §§ 31-7-9, 31-7-11, 31-7-12 and 31-7-13, see § 31-7-38.

State Bond Commission generally, see §§ 31-17-1 et seq.

Junior college districts, generally, see §§ 37-29-31 et seq.

Amount of a bond by a successful bidder for a contract for the purchase of equipment by or on behalf of the Mississippi Transportation Commission, see § 65-1-85.

Federal Aspects— Class Life Asset Depreciation Range System, see note regarding former § 167(m) under 26 USCS § 167.

§ 31-7-11. Purchasing practices.

Each agency of the state shall furnish information relative to its purchase of commodities, and as to its method of purchasing such commodities, to the Department of Finance and Administration annually and at such other times as the Department of Finance and Administration may request.

The Department of Finance and Administration shall have supervision over the purchasing and purchasing practices of each state agency and may by regulation or order correct any practice that appears contrary to the provisions of this chapter or to the best interests of the state. If it shall appear that any agency is not practicing economy in its purchasing or is permitting favoritism or any improper purchasing practice, the Department of Finance and Administration shall require that the agency immediately cease such improper activity, with full and complete authority in the Department of Finance and Administration to carry into effect its directions in such regard.

All purchases, trade-ins, sales or transfer of personal property made by any officer, board, agency, department or branch of the state government except the Legislature shall be subject to the approval of the Department of Finance and Administration. Such transaction shall be made in accordance with rules and regulations of the Department of Finance and Administration relating to the purchase of state-owned motor vehicles and all other personal property. The title of such property shall remain in the name of the state.

HISTORY: Codes, 1942, §§ 9024-06, 9024-07; Laws, 1962, ch. 497, §§ 6, 7; Laws, 1970, ch. 353, § 2; Laws, 1980, ch. 440, § 4; Laws, 1984, ch. 488, § 156; Laws, 1985, ch. 525, § 17; Laws, 2000, ch. 593, § 7, eff from and after passage (approved May 20, 2000).

Cross References — Additional method for purchase of certain motor vehicles, see § 31-7-18.

Purchases by hospitals or regional mental health centers participating in group purchasing programs of supplies; commodities and equipment through such programs are exempt from the provisions of this section and §§ 31-7-9, 31-7-10, 31-7-12 and 31-7-13, see § 31-7-38.

Penalties for violations of this chapter, see § 31-7-55.

Duty of prison auditor with respect to bids, purchases and sales, see § 47-5-35.

Bidding and contracting procedures under Mississippi Superconducting Super Collider Act, see § 57-67-37.

Amount of a bond by a successful bidder for a contract for the purchase of equipment by or on behalf of the Mississippi Transportation Commission, see § 65-1-85.

OPINIONS OF THE ATTORNEY GENERAL

The Medical Center would not be exempt from the provisions of Section 31-7-9 and this section when participating in a group purchase program, since Section 31-7-38 does not so provide. Ranck, October 11, 1996, A.G. Op. #96-0692.

Based on Sections 31-27-3, 31-27-5, 31-27-11, 31-27-13, 31-27-17 and the intent and policy of the Refinancing Act as announced by the Legislature, the certificates evidencing the debt of the District on the building constructed under the Lease-Purchase Act are bonds within the meaning of the statute and may be refunded by the issuance of general obligation refunding bonds. Piazza, October 14, 1996, A.G. Op. #96-0707.

Section 31-7-38 does not exempt hospital group purchase programs from the provisions and requirements of Section 31-7-9 and this section. These sections enumerate the duties and responsibilities of the Department of Finance and Administration with regard to purchases by state agencies, including University Medical Center. Ranck, November 8, 1996, A.G. Op. #96-0755.

Authority to pledge the same source of security would also include the authority to direct the Mississippi Department of Education to intercept and transmit pledged revenues to a trustee in a manner substantially the same as that provided in regard to the Mississippi Adequate Education Program Act bonds that are to be refunded. Bounds, Nov. 14, 2005, A.G. Op. 05-0530.

The Mississippi Department of Education is authorized to take any action with regard to Mississippi Adequate Education Program Act (MAEP) refunding bonds that it was authorized to take with regard to the original issuance of MAEP bonds. Likewise, even though the statutory language was repealed after the issuance of MAEP bonds, the state's obligation arising from Section 37-151-7(e) relating to the MAEP bonds would be applicable to MAEP refunding bonds as well, if that commitment is part and parcel of the original MAEP bond obligations. Bounds, Nov. 14, 2005, A.G. Op. 05-0530.

§ 31-7-12. State contract price for purchase of commodities.

(1) Except in regard to purchases of unmarked vehicles made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2), all agencies shall purchase commodities at the state contract price from the approved source, unless approval is granted by the Department of Finance and Administration to solicit purchases outside the terms of the contracts. However, prices accepted by an agency shall be less than the prices set by the state contract. Prices accepted by an agency shall be obtained in compliance with paragraph (a), (b) or (c) of Section 31-7-13. It shall be the responsibility of the Department of Finance and Administration to ascertain that the resulting prices shall provide a cost effective alternative to the established state contract.

(2) Governing authorities may purchase commodities approved by the Department of Finance and Administration from the state contract vendor, or from any source offering the identical commodity, at a price not exceeding the state contract price established by the Department of Finance and Administration for such commodity, without obtaining or advertising for competitive bids. Governing authorities that do not exercise the option to purchase such commodities from the state contract vendor or from another source offering the identical commodity at a price not exceeding the state contract price established by the Department of Finance and Administration shall make such

purchases pursuant to the provisions of Section 31-7-13 without regard to state contract prices established by the Department of Finance and Administration, unless such purchases are authorized to be made under subsection (5) of this section.

(3) Nothing in this section shall prohibit governing authorities from purchasing, pursuant to subsection (2) of this section, commodities approved by the Department of Finance and Administration at a price not exceeding the state contract price established by the Department of Finance and Administration.

(4) The Department of Finance and Administration shall ensure that the prices of all commodities on the state contract are the lowest and best prices available from any source offering that commodity at the same level of quality or service, utilizing the reasonable standards established therefor by the Department of Finance and Administration. If the Department of Finance and Administration does not list an approved price for the particular item involved, purchase shall be made according to statutory bidding and licensing requirements. To encourage prudent purchasing practices, the Department of Finance and Administration shall be authorized and empowered to exempt certain commodities from the requirement that the lowest and best price be approved by order placed on its minutes.

(5) Any school district may purchase commodities from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures pursuant to Section 31-7-13 for purchases of the same commodities. Purchases authorized by this subsection may be made by a school district without obtaining or advertising for competitive bids, and such purchases shall be made at the same prices and under the same conditions as purchases of the same commodities are to be made by the levying authority of the school district under the contract with the vendor.

HISTORY: Laws, 1980, ch. 440, § 5; Laws, 1983, ch. 330, § 2; Laws, 1984, ch. 488, § 157; Laws, 1985, ch. 525, § 18; Laws, 1986, ch. 489, § 13; Laws, 1988 Ex Sess, ch. 14, § 64; Laws, 1989, ch. 394, § 2; Laws, 1990, ch. 374, § 1; Laws, 1990, ch. 561, § 1; Laws, 1993, ch. 418, § 1; Laws, 1993, ch. 556, § 2; Laws, 1997, ch. 556, § 1; Laws, 2000, ch. 593, § 8, eff from and after passage (approved May 20, 2000).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected references appearing in the amendments made to this section by § 8 of ch. 593, Laws of 2000. The reference in subsection (2) to "subsection (6) of this section" was changed to "subsection (5) of this section." The reference in subsection (3) to "subsections (1) and (2) of this section" was changed to "subsection (2) of this section." The Joint Committee ratified these corrections at its June 29, 2000 meeting.

Cross References — Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Bidding procedures pertaining to public purchases, see § 31-7-13.

Exemption from the provisions of this section of purchases by hospitals participating in group purchasing program, see § 31-7-38.

Penalties for violating the provisions of this chapter, see § 31-7-55.

Purchase by school districts participating in group purchasing programs for procuring services, commodities, supplies and equipment provided under School Lunch and Child Nutrition programs, as subject to public bid requirements prescribed by this section, see § 37-11-7.

Procedure for exempting items and services from bid requirements in the prison agricultural enterprises program, see § 47-5-357.

Amount of a bond by a successful bidder for a contract for the purchase of equipment by or on behalf of the Mississippi Transportation Commission, see § 65-1-85.

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Purchase of used vehicle by county which advertised for bids for such vehicle is authorized, even though used vehicle will cost more than similar new vehicle, where vehicle is needed immediately, used vehicle is currently available, and new vehicle will not be available for several months. Gex, July 22, 1992, A.G. Op. #92-0498.

There is no requirement that vendors holding state contracts on goods must sell to rural water associations at state contract prices. See this section. Jones, October 4, 1996, A.G. Op. #96-0502.

Under the plain language of Section 31-7-38, if the University of Mississippi Medical Center does organize or participate in a group purchase program with other hospitals, then its purchases of supplies, commodities and equipment made through such program would be exempt from the provisions of this section and § 31-7-13. Ranck, October 11, 1996, A.G. Op. #96-0692.

A county board of supervisors, may authorize the use of Fuelman by the sheriff's department through the state contract under the authority granted in Section 31-7-12(2), and may provide money in the sheriff's budget to allow such purchases. Tolar, Jan. 27, 2006, A.G. Op. 06-0008.

§ 31-7-13. Bid requirements and exceptions; public auctions.

All agencies and governing authorities shall purchase their commodities and printing; contract for garbage collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals as herein provided.

(a) **Bidding procedure for purchases not over $5,000.00.** Purchases which do not involve an expenditure of more than Five Thousand Dollars ($5,000.00), exclusive of freight or shipping charges+, may be made without advertising or otherwise requesting competitive bids. However, nothing contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Thousand Dollars ($5,000.00) or less.

(b) **Bidding procedure for purchases over $5,000.00 but not over $50,000.00.** Purchases which involve an expenditure of more than Five Thousand Dollars ($5,000.00) but not more than Fifty Thousand Dollars ($50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any state agency or community/junior college purchasing commodities or procuring construction pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, to accept the lowest competitive written bid under Fifty Thousand Dollars ($50,000.00). Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. "Competitive" shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids. Any bid item for construction in excess of Five Thousand Dollars ($5,000.00) shall be broken down by components to provide detail of component description and pricing. These details shall be submitted with the written bids and become part of the bid evaluation criteria. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

(c) **Bidding procedure for purchases over $50,000.00.**

(i) **Publication requirement.**

1. Purchases which involve an expenditure of more than Fifty Thousand Dollars ($50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars ($25,000.00) shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

2. Reverse auctions shall be the primary method for receiving bids during the bidding process. If a purchasing entity determines that a reverse auction is not in the best interest of the state, then that determination must be approved by the Public Procurement Review Board. The purchasing entity shall submit a detailed explanation of why

a reverse auction would not be in the best interest of the state and present an alternative process to be approved by the Public Procurement Review Board. If the Public Procurement Review Board authorizes the purchasing entity to solicit bids with a method other than reverse auction, then the purchasing entity may designate the other methods by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, or bids received by any other method that promotes open competition and has been approved by the Office of Purchasing and Travel. However, reverse auction shall not be used for any public contract for design or construction of public facilities, including buildings, roads and bridges. The Public Procurement Review Board must approve any contract entered into by alternative process. The provisions of this item 2 shall not apply to the individual state institutions of higher learning.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars ($50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars ($25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars ($25,000.00) under the American Recovery and Reinvestment Act, publication shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the date of the published notice. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Submissions received by the Mississippi Procurement Technical Assistance Program for projects funded by the American Recovery and Reinvestment Act shall be displayed on a separate and unique internet web page accessible to the public and

maintained by the Mississippi Development Authority for the Mississippi Procurement Technical Assistance Program. Those American Recovery and Reinvestment Act related submissions shall be publicly posted within twenty-four (24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration shall maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique internet web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page for the duration of the American Recovery and Reinvestment Act funding or until the project is completed, whichever is longer.

(ii) **Bidding process amendment procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.**

1. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture.However, if valid justification is presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education.

2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or systems in which prospective bidders are instructed to include in their bids specified amounts for such items so long as the allowance items are acquired by the vendor in a commercially reasonable manner and approved by the agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

(v) **Electronic bids.** Agencies and governing authorities shall provide a secure electronic interactive system for the submittal of bids requiring competitive bidding that shall be an additional bidding option for those bidders who choose to submit their bids electronically. The Department of Finance and Administration shall provide, by regulation, the standards that agencies must follow when receiving electronic bids. Agencies and governing authorities shall make the appropriate provisions necessary to accept electronic bids from those bidders who choose to submit their bids electronically for all purchases requiring competitive bidding under this section. Any special condition or requirement for the electronic bid submission shall be specified in the advertisement for bids required by this section. Agencies or governing authorities that are currently without available high speed internet access shall be exempt from the requirement of this subparagraph (v) until such time that high speed internet access becomes available. Any county having a population of less than twenty thousand (20,000) shall be exempt from the provisions of this subparagraph (v). Any municipality having a population of less than ten thousand (10,000) shall be exempt from the provisions of this subparagraph (v). The provisions of this subparagraph (v) shall not require any bidder to submit bids electronically. When construction bids are submitted electronically, the requirement for including a certificate of responsibility, or a statement that the bid enclosed does not exceed Fifty Thousand Dollars ($50,000.00), on the exterior of the bid envelope as indicated in Section 31-3-21(1) and (2) shall be deemed in compliance with by including same as an attachment with the electronic bid submittal.

(d) **Lowest and best bid decision procedure.**

(i) **Decision procedure.** Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions, including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority, may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities. All best value procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) **Decision procedure for Mississippi Landmarks.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of Sections 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid and prequalification procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(iv) **Construction project negotiations authority.** If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or renovation project, then the agency or governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars ($10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

(f) **Alternate bid authorization.** When necessary to ensure ready availability of commodities for public works and the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.

(g) **Construction contract change authorization.** In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) **Petroleum purchase alternative.** In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids, as defined in paragraph (b) of this section. If two (2) competitive written bids are not obtained, the entity shall comply with the procedures set forth in paragraph (c) of this section. In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

(i) **Road construction petroleum products price adjustment clause authorization.** Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the Mississippi Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) **State agency emergency purchase procedure.** If the governing board or the executive head, or his designees, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the head of such agency, or his designees, shall file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency, which shall include a detailed description of the events leading up to the situation and the negative impact to the entity if the purchase is made following the statutory requirements set forth in paragraph (a), (b) or (c) of this section, and (ii) a certified copy of the appropriate minutes of the board of such agency requesting the emergency purchase, if applicable. Upon receipt of the statement and applicable board certification, the State Fiscal Officer, or his designees, may, in writing, authorize the purchase or repair without having to comply with competitive bidding requirements.

If the governing board or the executive head, or his designees, of any agency determines that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would threaten the health or safety of any person, or the preservation or protection of property, then the provisions in this section for competitive bidding shall not apply, and any officer or agent of the agency having general or specific authority for making the purchase or repair contract shall approve the bill presented for payment, and he shall certify in writing from whom the purchase was made, or with whom the repair contract was made.

Total purchases made under this paragraph (j) shall only be for the purpose of meeting needs created by the emergency situation. Following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be filed with the Department of Finance and Administration. Any contract awarded pursuant to this paragraph (j) shall not exceed a term of one (1) year.

Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (j).

(k) **Governing authority emergency purchase procedure.** If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority. Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (k).

(*l*) **Hospital purchase, lease-purchase and lease authorization.**

(i) The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract of purchase or lease-purchase agreement whose obligatory payment terms do not exceed five (5) years.

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (l), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.

(m) **Exceptions from bidding requirements.** Excepted from bid requirements are:

(i) **Purchasing agreements approved by department.** Purchasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration.

(ii) **Outside equipment repairs.** Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; however, invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

(iii) **In-house equipment repairs.** Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired.

(iv) **Raw gravel or dirt.** Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser.

(v) **Governmental equipment auctions.** Motor vehicles or other equipment purchased from a federal agency or authority, another governing authority or state agency of the State of Mississippi, or any governing authority or state agency of another state at a public auction held for the purpose of disposing of such vehicles or other equipment. Any purchase by a governing authority under the exemption authorized by this subparagraph (v) shall require advance authorization spread upon the minutes of the governing authority to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(vi) **Intergovernmental sales and transfers.** Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public auction except as provided for in subparagraph (v) of this paragraph (m). It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

(vii) **Perishable supplies or food.** Perishable supplies or food purchased for use in connection with hospitals, the school lunch programs, homemaking programs and for the feeding of county or municipal prisoners.

(viii) **Single source items.** Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration. Following the purchase, the executive head of the state agency, or his designees, shall file with the Department of Finance and Administration, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the source from whom it was purchased.

(ix) **Waste disposal facility construction contracts.** Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; however, in constructing such facilities, a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

(x) **Hospital group purchase contracts.** Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.

(xi) **Information technology products.** Purchases of information technology products made by governing authorities under the provisions of purchase schedules, or contracts executed or approved by the Mississippi Department of Information Technology Services and designated for use by governing authorities.

(xii) **Energy efficiency services and equipment.** Energy efficiency services and equipment acquired by school districts, community and junior colleges, institutions of higher learning and state agencies or other applicable governmental entities on a shared-savings, lease or lease-purchase basis pursuant to Section 31-7-14.

(xiii) **Municipal electrical utility system fuel.** Purchases of coal and/or natural gas by municipally owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.

(xiv) **Library books and other reference materials.** Purchases by libraries or for libraries of books and periodicals; processed film, videocassette tapes, filmstrips and slides; recorded audiotapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this subparagraph.

(xv) **Unmarked vehicles.** Purchases of unmarked vehicles when such purchases are made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2).

(xvi) **Election ballots.** Purchases of ballots printed pursuant to Section 23-15-351.

(xvii) **Multichannel interactive video systems.** From and after July 1, 1990, contracts by Mississippi Authority for Educational Television with any private educational institution or private nonprofit organization whose purposes are educational in regard to the construction, purchase, lease or lease-purchase of facilities and equipment and the employment of personnel for providing multichannel interactive video systems (ITSF) in the school districts of this state.

(xviii) **Purchases of prison industry products by the Department of Corrections, regional correctional facilities or privately owned prisons.** Purchases made by the Mississippi Department of Corrections, regional correctional facilities or privately owned prisons involving any item that is manufactured, processed, grown or produced from the state's prison industries.

(xix) **Undercover operations equipment.** Purchases of surveillance equipment or any other high-tech equipment to be used by law enforcement agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration.

(xx) **Junior college books for rent.** Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.

(xxi) **Certain school district purchases.** Purchases of commodities made by school districts from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures for purchases of the same commodities.

(xxii) **Garbage, solid waste and sewage contracts.** Contracts for garbage collection or disposal, contracts for solid waste collection or disposal and contracts for sewage collection or disposal.

(xxiii) **Municipal water tank maintenance contracts.** Professional maintenance program contracts for the repair or maintenance of municipal water tanks, which provide professional services needed to maintain municipal water storage tanks for a fixed annual fee for a duration of two (2) or more years.

(xxiv) **Purchases of Mississippi Industries for the Blind products.** Purchases made by state agencies or governing authorities involving any item that is manufactured, processed or produced by the Mississippi Industries for the Blind.

(xxv) **Purchases of state-adopted textbooks.** Purchases of state-adopted textbooks by public school districts.

(xxvi) **Certain purchases under the Mississippi Major Economic Impact Act.** Contracts entered into pursuant to the provisions of Section 57-75-9(2), (3) and (4).

(xxvii) **Used heavy or specialized machinery or equipment for installation of soil and water conservation practices purchased at auction.** Used heavy or specialized machinery or equipment used for the installation and implementation of soil and water conservation practices or measures purchased subject to the restrictions provided in Sections 69-27-331 through 69-27-341. Any purchase by the State Soil and Water Conservation Commission under the exemption authorized by this subparagraph shall require advance authorization spread upon the minutes of the commission to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(xxviii) **Hospital lease of equipment or services.** Leases by hospitals of equipment or services if the leases are in compliance with paragraph (l)(ii).

(xxix) **Purchases made pursuant to qualified cooperative purchasing agreements.** Purchases made by certified purchasing offices of state agencies or governing authorities under cooperative purchasing agreements previously approved by the Office of Purchasing and Travel and established by or for any municipality, county, parish or state government or the federal government, provided that the notification to potential contractors includes a clause that sets forth the availability of the cooperative purchasing agreement to other governmental entities. Such purchases shall only be made if the use of the cooperative purchasing agreements is determined to be in the best interest of the governmental entity.

(xxx) **School yearbooks.** Purchases of school yearbooks by state agencies or governing authorities; provided, however, that state agencies and governing authorities shall use for these purchases the RFP process as set forth in the Mississippi Procurement Manual adopted by the Office of Purchasing and Travel.

(xxxi) **Design-build method and dual-phase design-build method of contracting.** Contracts entered into under the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

(xxxii) **Toll roads and bridge construction projects.** Contracts entered into under the provisions of Section 65-43-1 or 65-43-3.

(xxxiii) **Certain purchases under Section 57-1-221.** Contracts entered into pursuant to the provisions of Section 57-1-221.

(xxxiv) **Certain transfers made pursuant to the provisions of Section 57-105-1(7).** Transfers of public property or facilities under Section 57-105-1(7) and construction related to such public property or facilities.

(xxxv) **Certain purchases or transfers entered into with local electrical power associations.** Contracts or agreements entered into under the provisions of Section 55-3-33.

(xxxvi) Certain purchases by an academic medical center or health sciences school. Purchases by an academic medical center or health sciences school, as defined in Section 37-115-50, of commodities that are used for clinical purposes and 1. intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease, and 2. medical devices, biological, drugs and radiation-emitting devices as defined by the United States Food and Drug Administration.

(xxxvii) **Certain purchases made under the Alyce G. Clarke Mississippi Lottery Law.** Contracts made by the Mississippi Lottery Corporation pursuant to the Alyce G. Clarke Mississippi Lottery Law.

(n) **Term contract authorization.** All contracts for the purchase of:

(i) All contracts for the purchase of commodities, equipment and public construction (including, but not limited to, repair and maintenance), may be let for periods of not more than sixty (60) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office. Term contracts for a period exceeding twenty-four (24) months shall also be subject to ratification or cancellation by governing authority boards taking office subsequent to the governing authority board entering the contract.

(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public construction.

(o) **Purchase law violation prohibition and vendor penalty.** No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor shall it be lawful for any person or concern to submit individual invoices for amounts within those authorized for a contract or purchase where the actual value of the contract or commodity purchased exceeds the authorized amount and the invoices therefor are split so as to appear to be authorized as purchases for which competitive bids are not required. Submission of such invoices shall constitute a misdemeanor punishable by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for thirty (30) days in the county jail, or both such fine and imprisonment. In addition, the claim or claims submitted shall be forfeited.

(p) **Electrical utility petroleum-based equipment purchase procedure.** When in response to a proper advertisement therefor, no bid firm as to price is submitted to an electric utility for power transformers, distribution transformers, power breakers, reclosers or other articles containing a petroleum product, the electric utility may accept the lowest and best bid therefor although the price is not firm.

(q) **Fuel management system bidding procedure.** Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (q), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term “competitive written bid” shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

(r) **Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars ($50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than the amount provided in paragraph (c) of this section. Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

(s) **Minority set-aside authorization.** Notwithstanding any provision of this section to the contrary, any agency or governing authority, by order placed on its minutes, may, in its discretion, set aside not more than twenty percent (20%) of its anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the Department of Finance and Administration and shall be subject to bid requirements under this section. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder. For the purposes of this paragraph, the term "minority business" means a business which is owned by a majority of persons who are United States citizens or permanent resident aliens (as defined by the Immigration and Naturalization Service) of the United States, and who are Asian, Black, Hispanic or Native American, according to the following definitions:

(i) "Asian" means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(ii) "Black" means persons having origins in any black racial group of Africa.

(iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.

(iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

(t) **Construction punch list restriction.** The architect, engineer or other representative designated by the agency or governing authority that is contracting for public construction or renovation may prepare and submit to the contractor only one (1) preliminary punch list of items that do not meet the contract requirements at the time of substantial completion and one (1) final list immediately before final completion and final payment.

(u) **Procurement of construction services by state institutions of higher learning.** Contracts for privately financed construction of auxiliary facilities on the campus of a state institution of higher learning may be awarded by the Board of Trustees of State Institutions of Higher Learning to the lowest and best bidder, where sealed bids are solicited, or to the offeror whose proposal is determined to represent the best value to the citizens of the State of Mississippi, where requests for proposals are solicited.

(v) **Insurability of bidders for public construction or other public contracts.** In any solicitation for bids to perform public construction or other public contracts to which this section applies, including, but not limited to, contracts for repair and maintenance, for which the contract will require insurance coverage in an amount of not less than One Million Dollars ($1,000,000.00), bidders shall be permitted to either submit proof of current insurance coverage in the specified amount or demonstrate ability to obtain the required coverage amount of insurance if the contract is awarded to the bidder. Proof of insurance coverage shall be submitted within five (5) business days from bid acceptance.

(w) **Purchase authorization clarification.** Nothing in this section shall be construed as authorizing any purchase not authorized by law.

HISTORY: Codes, 1942, § 9024-08; Laws, 1962, ch. 497, § 8; Laws, 1980, ch. 440, § 6; Laws, 1981, ch. 306, § 2; Laws, 1982, ch. 449, § 1; Laws, 1983, ch. 330, § 3, ch. 341; Laws, 1984, ch. 363; Laws, 1984, ch. 480, § 3; Laws, 1984, ch. 488, § 158; Laws, 1985, ch. 493, § 6; Laws, 1986, ch. 398; Laws, 1986, ch. 489, § 14; Laws, 1988, ch. 351; Laws, 1988, ch. 589, § 23; Laws, 1988 Ex Sess, ch. 14, § 65; Laws, 1989, ch. 349, § 1; Laws, 1989, ch. 394, § 3; Laws, 1990, ch. 534, § 27; Laws, 1990, ch. 545, § 2; Laws, 1990, ch. 561, § 2; Laws, 1990, 1st Ex Sess, ch. 51, § 2; Laws, 1991, ch. 337, § 1; Laws, 1991, ch. 523, § 1; Laws, 1992, ch. 571 § 3; Laws, 1993, ch. 418, § 2; Laws, 1993, ch. 617, § 12; Laws, 1993, ch. 556, § 3; Laws, 1994, ch. 471, § 2; Laws, 1994 Ex Sess, ch. 26, § 22; Laws, 1996, ch. 495, § 1; Laws, 1997, ch. 593, § 1; Laws, 1998, ch. 574, § 6; Laws, 1999, ch. 407, § 1; Laws, 1999, ch. 459, § 1; Laws, 2000, ch. 428, § 3; Laws, 2000, ch. 593, § 9; Laws, 2000, 3rd Ex Sess, ch. 1, § 13; Laws, 2001, ch. 333, § 2; Laws, 2002, ch. 563, § 1; Laws, 2003, ch. 539, § 5; Laws, 2004, ch. 394, § 1; Laws, 2004, ch. 577, § 2; Laws, 2004, 3rd Ex Sess, ch. 1, § 190; Laws, 2005, ch. 504, § 5; Laws, 2006, ch. 446, § 1; Laws, 2007, ch. 423, § 1; Laws, 2007, ch. 424, § 2; Laws, 2007, ch. 494, § 7; Laws, 2007, ch. 582, § 22; Laws, 2008, ch. 417, § 1; Laws, 2008, ch. 469, § 1; brought forward without change,

Laws, 2008, ch. 544, § 4; Laws, 2009, ch. 538, § 1; Laws, 2010, ch. 301, § 7; Laws, 2010, ch. 533, § 26; Laws, 2011, ch. 485, § 2; Laws, 2012, ch. 446, § 2; Laws, 2013, ch. 390, § 1; Laws, 2013, ch. 466, § 3; Laws, 2013, ch. 519, § 1; Laws, 2015, ch. 488, § 1; Laws, 2017, ch. 398, § 5; Laws, 2017, ch. 400, § 16; Laws, 2017, ch. 411, § 1, eff from and after Jan. 1, 2018; Laws, 2018, 1st Ex Sess, ch. 2, § 51, eff from and after September 1, 2018; Laws, 2020, ch. 488, § 10, eff from and after passage (became law without the Governor's signature on July 9, 2020).

Joint Legislative Committee Note — Section 1 of ch. 407, Laws of 1999, effective from and after July 1, 1999 (approved March 17, 1999), amended this section. Section 1 of ch. 459, Laws of 1999, effective July 1, 1999 (approved April 1, 1999), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 459, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 3 of ch. 428, Laws of 2000, effective from and after July 1, 2000, amended this section. Section 9 of ch. 593, Laws of 2000, effective from and after its passage (approved May 20, 2000), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the Legislative intent at the June 29, 2000, meeting of the Committee.

Section 1 of ch. 394, Laws of 2004, effective from and after July 1, 2004 (approved April 20, 2004), amended this section. Section 2 of ch. 577, Laws of 2004, effective from and after July 1, 2004 (approved May 27, 2004), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 577, Laws of 2004, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 1 of ch. 423, Laws of 2007, effective from and after passage (approved March 20, 2007), amended this section. Section 2 of ch. 424, Laws of 2007, effective July 1, 2007 (approved March 20, 2007), also amended this section. Section 7 of ch. 494, Laws of 2007, effective July 1, 2007 (approved March 27, 2007), amended this section. Section 22 of ch. 582, Laws of 2007, effective July 18, 2007, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, also amended this section. As set out above, this section reflects the language of Section 22 of ch. 582, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 1 of ch. 417, Laws of 2008, effective from and after July 1, 2008 (approved April 2, 2008), amended this section. Section 1 of ch. 469, Laws, 2008, effective July 1, 2008 (approved April 14, 2008), also amended this section. Section 4 of ch. 544, Laws, 2008, effective upon passage (approved May 9, 2008), brought this section forward without change. As set out above, this section reflects the language of all amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2008, meeting of the Committee.

Section 7 of ch. 301, Laws of 2010, effective upon passage (approved January 12, 2010), amended this section. Section 26 of ch. 533, Laws of 2010, effective upon passage (approved April 16, 2010), also amended this section. As set out above, this section reflects the language of Section 26 of ch. 533, Laws of 2010, which contains language that specifically provides that it superseded § 31-7-13 as amended by Laws of 2010, ch. 301.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (d). Paragraph (iv), as added by Section 2 of Chapter 485, Laws of 2011, was redesignated paragraph (iii), and former (iii) was redesignated (iv). The Joint Committee ratified the correction at its July 13, 2011, meeting.

Section 1 of ch. 390, Laws of 2013, effective from and after July 1, 2013 (approved March 20, 2013), Section 3 of ch. 466, Laws of 2013, effective from and after July 1, 2013 (approved March 26, 2013), and Section 1 of ch. 519, Laws of 2013, effective from and after July 1, 2013 (approved April 23, 2013), amended this section. As set out above, this section reflects the language of Section 1 of ch. 519, Laws of 2013, which contains language that specifically provides that it supersedes § 31-7-13 as amended by ch. 390 and ch. 466, Laws of 2013.

Section 5 of Chapter 398, Laws of 2017, effective from and after July 1, 2017 (approved March 28, 2017), amended this section. Section 16 of Chapter 400, Laws of 2017, effective from and after January 1, 2018, (approved March 29, 2017), and Section 1 of Chapter 411, Laws of 2017, effective from and after January 1, 2018 (approved April 6, 2017), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 411, Laws of 2017, which contains language that specifically provides that it supersedes § 31-7-13 as amended by Chapters 398 and 400, Laws of 2017.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 1989, ch. 349, § 2, provides as follows:

"SECTION 2. Any contract for the purchase of commodities other than equipment for a period of not more than twenty-four (24) months in advance, which was made before the effective date of this act (March 12, 1989) and which would have been legal under paragraph (n) of Section 31-7-13 if such contract had been made after the effective date of this act (March 12, 1989), is ratified, confirmed and validated".

Laws of 1990, ch. 561, § 3, provides as follows:

"SECTION 3. Any contract for the purchase of commodities or equipment for a period of not more than twenty-four (24) months in advance, which was made before the effective date of this act and which would have been legal under paragraph (n) of Section 31-7-13 as amended by this act if such contract had been made after the effective date of this act, is ratified, confirmed and validated."

Laws of 1990, 1st Extraordinary Session, ch. 51, § 3, effective June 30, 1990, provides as follows:

"SECTION 3. Any lease-purchase agreement by any agency entered into after April 4, 1990, and before the effective date of Senate Bill No. 2991, 1991 Regular Session [Laws, 1991, ch. 424], which was approved in writing by the Department of Finance and Administration, shall be a valid and binding obligation of such agency, in accordance with the terms of such lease-purchase agreement, to the same extent as any lease-purchase agreement entered into pursuant to the provisions of Section 31-7-13(e) as amended by Chapter 51, First Extraordinary Session of 1990. Any lease-purchase agreement by any governing authority entered into after April 4, 1990, and before the effective date of Senate Bill No. 2991, 1991 Regular Session [Laws, 1991, ch. 424], which is in compliance with Section 31-7-13(e), as amended by Chapter 51, First Extraordinary Session of 1990, shall be a valid and binding obligation of such governing authority, in accordance with the terms of such lease-purchase agreement, to the same extent as any lease-purchase agreement entered into pursuant to the provisions of Section 31-7-13(e) as amended by Chapter 51, First Extraordinary Session of 1990." [Amended, Laws, 1991, ch. 424, § 2, eff from and after passage (approved March 20, 1991).].

Laws of 1996, ch. 495, § 3, provides as follows:

"SECTION 3. Any agency or governing authority that has received a bid or bids for a public construction or renovation project on or after January 1, 1996, may exercise the authority granted under subparagraph (d)(iv) of Section 31-7-13, Mississippi Code of 1972."

Former subparagraph (xxv) of paragraph (m) relating to State Prison Emergency Construction and Management Board contracts or purchases was repealed by its own terms from and after July 1, 1997.

Laws of 1998, ch. 574, § 2 provides as follows:

"SECTION 2. It is the intent of the Legislature that citizens of the State of Mississippi who have physical or mental disabilities shall be afforded the opportunity to compete and participate in employment on an equal basis with persons who are not disabled, if the disabled persons are qualified and able to perform the essential functions of the employment positions that are held or sought."

On July 18, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 582, § 22.

Laws of 2017, ch. 398, § 6, provides:

"SECTION 6. The provisions of this act are severable. If any part is declared invalid or unconstitutional, that declaration shall not affect the part which remains."

Laws of 2020, ch. 488, § 11, effective July 9, 2020, provides:

"SECTION 11. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

Amendment Notes — The 2020 amendment, effective July 9, 2020, in (j), added the last paragraph; and in (k), added the last sentence.

Cross References — Purchase of computer or information technology equipment by department of information technology services, see §§ 25-53-5 and 25-53-21.

Alyce G. Clarke Mississippi Lottery Law, see § 27-115-1 et seq.

State contract price for public purchases, see § 31-7-12.

Qualifications based selection procedures as outlined in § 31-7-13.2(10) or competitive sealed procedures as outlined in this section to be used when procuring construction management services, see § 31-7-13.2.

Public contracts for energy efficiency services, see § 31-7-14.

Exemption from the provision of this section of purchases by hospitals participating in group purchasing program, see § 31-7-38.

Penalties for violating the provisions of this chapter, see § 31-7-55.

Procedure on bids, see § 31-7-105.

Provision that an audit upon the close of the fiscal year of a county shall review the county's compliance with certain requirements of this section, inter alia, see § 31-7-115.

Prohibition of boards of supervisors from purchasing items or services for their county, except as provided in this section, see § 31-7-119.

Purchase and use of relocatable classrooms, see § 37-1-13.

Purchase by school districts participating in group purchasing programs for procuring services, commodities, supplies and equipment provided under School Lunch and Child Nutrition programs, as subject to public bid requirements prescribed by this section, see § 37-11-7.

Mississippi Authority for Educational Television generally, see §§ 37-63-1 et seq.

Provisions governing prison industries, see §§ 47-5-531 through 47-5-575.

Duty of prison auditor with respect to bids, purchases, and sales, see § 47-5-35.

Application of definition of "minority" in Mississippi Small Business Assistance Act, see § 57-10-513.

Bidding and contracting procedures under Mississippi Superconducting Super Collider Act, see § 57-67-37.

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

Amount of a bond by a successful bidder for a contract for the purchase of equipment by or on behalf of the Mississippi Transportation Commission, see § 65-1-85.

Contracts entered into by governmental entity under § 65-43-3 exempt from provisions of this section, see § 65-43-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Federal Aspects— Class Life Asset Depreciation Range System, see note regarding former § 167(m) under 26 USCS § 167. American Recovery and Reinvestment Act, see Public Law 111-5, 123 Stat. 115.

JUDICIAL DECISIONS

ANALYSIS

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5. Relationship to other laws.
6. Exemption from bidding process.
7.-9. [Reserved for future use.]
10. Under former §§ 31-7-43, 31-7-45.

1. In general.

Circuit court erred in affirming a city's conditional award of a contract for a public construction project to bidder whose bid exceeded the project's allocated funds by more than 10 percent because the city's actions in making the bid dependent upon the city obtaining additional public funds to match the bid were not provided by law, it could not be argued fairly that the city's actions were necessarily implied by the statute, and the foundational principles underlying the statutory requirements of competitive bidding negated any inference that the city could obtain additional public funds post-bid opening. Hemphill Constr. Co. v. City of Clarksdale, 250 So. 3d 1258, 2018 Miss. LEXIS 356 (Miss. 2018).

Trial court properly remanded to the board of supervisors to provide a caterer with a due-process hearing and to consider evidence to determine if its prior contract rescission was justified because a supplementation of the factual basis of the board's justification after the hearing was required to allow for judicial review of the board's decision. Howell v. Bd. of Supervisors, 179 So. 3d 34, 2015 Miss. App. LEXIS 187 (Miss. Ct. App.), cert. denied, 178 So. 3d 729, 2015 Miss. LEXIS 566 (Miss. 2015).

Circuit court properly ruled that a contractor's appeal of the decision of a county board of supervisors to award a contract to another was moot because the circuit court gave the board an opportunity to decide that it would reject all previous bids and reopen the request-for-proposals process, and the board decided to reject all bids and reopen the request-for-proposals process; any error that resulted from the circuit court's decision to remand for reconsideration of the matter by the board was harmless because the circuit court could have ordered the board to reject all bids and reopen the request-for-proposals process. Precision Communs., Inc. v. Hinds County, 74 So. 3d 366, 2011 Miss. App. LEXIS 252 (Miss. Ct. App.), cert. denied, 73 So. 3d 1168, 2011 Miss. LEXIS 548 (Miss. 2011).

In a construction company's breach of contract action, a trial court erred in granting summary judgment to the Mississippi Transportation Commission because the last sentence of a diesel fuel and asphalt cost (FAC) provision in the parties' completion agreement should have been stricken because it contravened the requirements of Miss. Code Ann. § 31-7-13(i) (Rev. 2008). While the FAC provision was unambiguous, and the plain meaning of the words used in the FAC supported the Commission's interpretation of the contract, the last sentence of the FAC impermissibly locked in reimbursements to the construction company based on the price of petroleum as of the expiration of contract time. Hill Bros. Constr. Co. v. Miss. Transp. Comm'n, 42 So. 3d 497, 2010 Miss. LEXIS 308 (Miss. 2010).

Circuit court properly dismissed a company's challenge to the City's decision to award a sewer improvement project to the second lowest bidder as the City complied with Miss. Code Ann. § 31-7-13(d)(i), did not violate the company's due process rights, and did not act arbitrarily and capriciously in rejecting the company's lowest bid. Because the City rejected the company's bid for reasons that could not be reduced to "detailed calculations," the City's minutes provided the minimal, requisite "detailed calculations" pursuant to § 31-7-13(d)(i) by citing the dollar amounts of the lowest bid and the accepted bid. Nelson v. City of Horn Lake, 968 So. 2d 938, 2007 Miss. LEXIS 636 (Miss. 2007).

Circuit court properly dismissed a company's challenge to the City's decision to award a sewer improvement project to the second lowest bidder as the City complied with Miss. Code Ann. § 31-7-13(d)(i), did not violate the company's due process rights, and did not act arbitrarily and capriciously in rejecting the company's lowest bid. Because the City's advertisement for bids allowed for consideration of bidders' "responsibility," and because the City also reserved the right to investigate bidders, the City had the right to reject the company's bid based on numerous complaints regarding the company's prior work. Nelson v. City of Horn Lake, 968 So. 2d 938, 2007 Miss. LEXIS 636 (Miss. 2007).

H.B. 1671, Reg. Sess. (Miss. 2006), was a private law which enabled the city to obtain municipal parking facilities in exchange for the conveyance of air and development rights; the last sentences of sections 3 and 4 were unconstitutional under Miss. Const. Art. IV, § 87, as exempting the bill from compliance with Miss. Code Ann. §§ 21-17-1 and 31-7-13 and were not merely procedural and minor. Oxford Asset Partners, LLC v. City of Oxford, 970 So. 2d 116, 2007 Miss. LEXIS 575 (Miss. 2007).

The Mississippi Emergency Management Law, §§ 33-15-1 et seq., is not to be read in pari materia with subsection (k) of this section; during an emergency, the Emergency Management Law controls. Bolivar County v. Wal-Mart Stores, Inc., 797 So. 2d 790, 1999 Miss. LEXIS 333 (Miss. 1999).

This section regulates the process by which boards of supervisors may purchase heavy equipment for road maintenance and other related purposes. Canton Farm Equipment, Inc. v. Richardson, 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

Although a county board of supervisors may advertise for purchase of equipment pursuant to this section, the board is not invariably required to accept the lowest bid, rather, the law contemplates that the board, if it accepts any bids at all, will accept the lowest and best bid and, if it accepts a bid that is not dollarwise the lowest, the board must place on its minutes the detailed calculations in a narrative summary explaining why the accepted bid was determined to be the lowest and best bid. Canton Farm Equipment, Inc. v. Richardson, 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

2. Factors considered.

That appellant's suppliers were protected by a payment bond given under Miss. Code Ann. § 85-7-185 [repealed] did not preclude a school board, which awarded the contract to the next lowest bidder, from considering appellant's prior payment disputes with suppliers. Rod Cooke Constr. Co. v. Lamar County Sch. Bd., 135 So. 3d 902, 2013 Miss. App. LEXIS 641 (Miss. Ct. App. 2013), cert.

denied, 136 So. 3d 437, 2014 Miss. LEXIS 204 (Miss. 2014).

School board's award of contract to appellant's competitor, though appellant was the lowest bidder, was not arbitrary or capricious, because the board was not statutorily obligated to accept the lowest bid, and the bid documents stated that the board could award a contract to an entity other than the lowest bidder if it determined it was "best" to do so. Rod Cooke Constr. Co. v. Lamar County Sch. Bd., 135 So. 3d 902, 2013 Miss. App. LEXIS 641 (Miss. Ct. App. 2013), cert. denied, 136 So. 3d 437, 2014 Miss. LEXIS 204 (Miss. 2014).

Decision by a county board of supervisors to award a public contract to construct a jail to a bidder who was the third lowest bidder was not arbitrary and capricious because the board had the discretion to consider a bidder's prior experience when awarding the contract, Miss. Code Ann. § 31-7-13, and the lowest bidder never submitted any documentation of prior experience and the second lowest bidder's documentation of prior experience did not meet the prior experience requirement. Murphy & Sons, Inc. v. DeSoto County Bd. of Supervisors, 122 So. 3d 87, 2013 Miss. App. LEXIS 58 (Miss. Ct. App.), cert. denied, 121 So. 3d 918, 2013 Miss. LEXIS 506 (Miss. 2013).

Request by a county board of supervisors that bidders provide a list of prior jail-construction experience did not amount to an impermissible prequalification of bidders, Miss. Code Ann. § 31-7-13, because the prior-experience requirement: (1) did not violate any of the purposes of the competitive bidding process; (2) was not unreasonably restrictive to bidders; and (3) left discretion to the board to consider bids that did not conform to the bid specifications. Murphy & Sons, Inc. v. DeSoto County Bd. of Supervisors, 122 So. 3d 87, 2013 Miss. App. LEXIS 58 (Miss. Ct. App.), cert. denied, 121 So. 3d 918, 2013 Miss. LEXIS 506 (Miss. 2013).

County board of supervisors' consideration of a local company's promise to employ local residents and provide special services to the elderly in awarding a contract for solid waste disposal, when it had failed to include them in the request for proposals, was a violation of Miss. Code Ann. ' 31-7-13(r), requiring the bid process to be reinitiated. Preferred Transp. Co., LLC v. Claiborne County Bd. of Supervisors, 32 So. 3d 549, 2010 Miss. App. LEXIS 170 (Miss. Ct. App. 2010).

In case in which a wastewater services company challenged a utility authority's acceptance of another company's proposal for the operation and management of the authority's wastewater facilities, the services company unsuccessfully argued that there was no justification in awarding the winning company the contract because the services company's proposal was the lowest price. Pursuant to Miss. Code Ann. § 31-7-13(r), price was just one factor for the authority to consider. Wastewater Plant Serv. Co. v. Harrison County Util. Auth., 28 So. 3d 686, 2010 Miss. App. LEXIS 97 (Miss. Ct. App. 2010).

Agency's argument that competitive bidding laws prohibited it from paying the contractor for changes or modifications to the construction contract because the changes were not "commercially reasonable" as required by Miss. Code Ann. § 31-7-13(g) was improper because the contractor made the agency aware of the complications. The contractor did not wait until the project had overrun before approaching the agency for change orders. Tupelo Redevelopment Agency v. Gray Corp., 972 So. 2d 495, 2007 Miss. LEXIS 577 (Miss. 2007).

Trial court properly upheld a county board of supervisors' award of a construction contract to a resident contractor because a nonresident contractor, whose bid was the lowest, had some negative references. Pursuant to Miss. Code Ann. § 31-7-13(d)(i), the board was free to consider the experience, skill, and reputation of the competing firms in determining which bid was the "lowest and best." Billy E. Burnett, Inc. v. Pontotoc County Bd. of Supervisors, 940 So. 2d 241, 2006 Miss. App. LEXIS 138 (Miss. Ct. App.), cert. denied, 939 So. 2d 805, 2006 Miss. LEXIS 627 (Miss. 2006).

3. Amendment of bid price.

A governing authority cannot accept a bid price increase after sealed bids are opened, except where the error and the intended correct bid are evident on the face of the bid document. Hemphill Constr. Co. v. City of Laurel, 760 So. 2d 720, 2000 Miss. LEXIS 111 (Miss. 2000).

4. Cancellation of a contract.

Board of supervisors' capricious rescission of a caterer's contract for prisoner catering services was in error because it was arbitrarily based upon consideration of matters outside of the bid specifications; the board rescinded the award of the contract despite the caterer's compliance with bid requirements and certifications, and it based its decision upon the testimony of the sheriff, which lacked a credible basis upon which it could base its decision. Howell v. Bd. of Supervisors, 179 So. 3d 34, 2015 Miss. App. LEXIS 187 (Miss. Ct. App.), cert. denied, 178 So. 3d 729, 2015 Miss. LEXIS 566 (Miss. 2015).

In a 42 U.S.C.S. § 1983 case in which a contract was extended for 24 months by a former mayor and board of aldermen (board) and the contract was cancelled by the new mayor and board, the contractor and the assignee argued unsuccessfully that the cancellation violated the Contracts Clause, U.S. Const. art. I, § 10. Even if it was determined that the cancellation of the contract constituted a substantial impairment and was not justified by a legitimate public purpose, the continuance of the contract against the wishes of the successor municipal board would have violated the board's sovereignty as provided by Mississippi common law and Miss. Code Ann. § 31-7-13(n)(i). ECO Res., Inc. v. City of Horn Lake, 640 F. Supp. 2d 826, 2009 U.S. Dist. LEXIS 55280 (N.D. Miss. 2009), aff'd, 379 Fed. Appx. 326, 2010 U.S. App. LEXIS 10183 (5th Cir. Miss. 2010).

In a case in which a contractor and its assignee argued that a new mayor and board of alderman ratified the contract extension made by the former mayor and board of alderman when they modified the contract, given the disclaimer in the mayor's letter to the contractor, the contractor and its assignee failed to create a genuine issue of material fact establishing that the successor board of aldermen ratified the former board of aldermen's agreement to extend the term of the maintenance contract. Pursuant to Miss. Code Ann. § 31-7-13(n)(i) and Mississippi common law, the voiding of the maintenance contract by the successor board of aldermen did not offend Mississippi law. ECO Res., Inc. v. City of Horn Lake, 640 F. Supp. 2d 826, 2009 U.S. Dist. LEXIS 55280 (N.D. Miss. 2009), aff'd, 379 Fed. Appx. 326, 2010 U.S. App. LEXIS 10183 (5th Cir. Miss. 2010).

5. Relationship to other laws.

Substantial evidence supported a school district's conservator's decision to terminate a superintendent because the evidence showed the superintendent violated district policy and state law by obtaining vehicles without required competitive bids or approval of the district's board of trustees and did not properly supervise an employee who acquired the vehicles. Leigh v. Aberdeen Sch. Dist., 207 So. 3d 1276, 2016 Miss. App. LEXIS 307 (Miss. Ct. App. 2016), writ denied, 207 So. 3d 1240, 2017 Miss. LEXIS 22 (Miss. 2017).

In a 42 U.S.C.S. § 1983 case in which a contractor and its assignee sued a city following the cancellation of a contract which had been extended for 24 months by the former mayor and board of alderman (board) and cancelled by the new mayor and board, the contractor and its assignee unsuccessfully argued that Miss. Code Ann. § 21-7-7 authorized the original board to agree to the term extension. Under Miss. Code Ann. § 31-7-13(n)(i), the contract extension was an ultra vires act in the sense that the former mayor and board could not legally agree to bind the new mayor and board to the contract. ECO Res., Inc. v. City of Horn Lake, 640 F. Supp. 2d 826, 2009 U.S. Dist. LEXIS 55280 (N.D. Miss. 2009), aff'd, 379 Fed. Appx. 326, 2010 U.S. App. LEXIS 10183 (5th Cir. Miss. 2010).

6. Exemption from bidding process.

In case in which a wastewater services company challenged a utility authority's acceptance of another company's proposal for the operation and management of the authority's wastewater facilities, the services company unsuccessfully argued that the authority violated Miss. Code Ann. § 31-7-13(c) and (d) by not re-opening the bidding so that other bidders could modify their bids and by not stating the reasons for not choosing the lowest bid. Neither subsection applied to the contract because the contract was for a wastewater-treatment system and was exempt from bidding requirements pursuant to Miss. Code Ann. § 31-7-13(m)(xxii). Wastewater Plant Serv. Co. v. Harrison County Util. Auth., 28 So. 3d 686, 2010 Miss. App. LEXIS 97 (Miss. Ct. App. 2010).

7.-9. [Reserved for future use.]

10. Under former §§ 31-7-43, 31-7-45.

A suit for bills of lumber, totaling over $1,400, sold to a member of a board of supervisors, without competitive bids having been secured, was dismissed, in the absence of a showing that any emergency existed suspending the requirement of the statute, notwithstanding it might be conceded that the account was susceptible of a breaking down into separate and independent items each less than $100. Duncan v. Board of Sup'rs, 4 So. 2d 219 (Miss. 1941).

A special act of the Legislature authorizing the board of supervisors of a designated county to reimburse a former sheriff thereof for expense incurred in purchasing disinfectants for the county jail, which claim had previously been disallowed by the board of supervisors, was void as being within the prohibition of this section [Code 1942, § 9027] in suspending the operation of a general law (Code 1942, § 9027) relating to the purchase of supplies by the county which expressly requires contracts for the purchase of supplies, etc., to be let upon competitive bids and prohibits any individual members of the board from making such purchases. Beall v. Board of Supervisors, 191 Miss. 470, 3 So. 2d 839, 1941 Miss. LEXIS 171 (Miss. 1941).

The statute was not complied with so as to permit recovery against a county for lumber supplies to a county supervisor for the repair of bridges in his district, one of which consumed more than $100 of such lumber, by dividing the bill for the total amounts of lumber into lots of less than $100 each, there being no emergency. Bigham v. Lee County, 184 Miss. 138, 185 So. 818, 1939 Miss. LEXIS 48 (Miss. 1939).

"Emergency" in statute authorizing members of board of supervisors to make emergency expenditures is unforeseen occurrence of combination of circumstances calling for immediate action. Attala County v. Mississippi Tractor & Equipment Co., 162 Miss. 564, 139 So. 628, 1932 Miss. LEXIS 146 (Miss. 1932).

Statute empowering members of board of supervisors to make emergency expenditures held inapplicable, where articles were purchased as needed for county's road machinery. Attala County v. Mississippi Tractor & Equipment Co., 162 Miss. 564, 139 So. 628, 1932 Miss. LEXIS 146 (Miss. 1932).

When price of disinfectants for jail and courthouse exceeded one hundred dollars, individual member of board of supervisors had no authority to contract therefor. Franklin County v. American Disinfectant Co., 153 Miss. 583, 121 So. 271, 1929 Miss. LEXIS 59 (Miss. 1929).

OPINIONS OF THE ATTORNEY GENERAL

Regardless of format, copyright library materials intended for circulation, including books, periodicals, maps, microforms, films, filmstrips, video tapes, audio tapes, records, and compact discs, are exempt from bid requirements. Woodburn, Jan. 24, 1990, A.G. Op. #90-0055.

If City of Tupelo requests and receives letter from State Auditor's Department documenting Neilsen/Data Quest price on certain piece of equipment, City may then purchase such equipment from adjacent state agency if state agency price does not exceed Neilsen/Data Quest price; if piece of equipment is not listed, then city may purchase by negotiation. Mitchell, Feb. 28, 1990, A.G. Op. #90-0177.

Pearl River Valley Water Supply District is, in specific and limited context of state purchasing laws, governing authority, and as such may exercise discretionary authority afforded other governing authorities with respect to purchase of liability insurance. Stennis, Sept. 4, 1992, A.G. Op. #92-0716.

Fact that port commission failed to take official action on emergency repair resolution "at the board meeting next" within subsection (k) of this section is not fatal to contract but is, at worst, harmless error; therefore, emergency repair bill may be lawfully considered for payment, provided all other requisites of subsection (k) of this section were, consistent with fact, adjudicated and spread on port commission minutes at either of commission's next two meetings. Genin, Jan. 20, 1993, A.G. Op. #92-1008.

Any purchase of materials by school board would have to be made in accordance with this section which provides that only expenditures of less than $5,000 may be made without advertising for bids; if school board elects to make multiple purchases connected to single project, it must exercise care not to split invoices or otherwise act so as to circumvent preceding provisions. Cronin, Feb. 10, 1993, A.G. Op. #93-0027.

Lease-purchase of equipment by counties is governed by subsection (e) of this section which does not address refinancing arrangement; however, nothing in this statute appears to prohibit refinancing if in fact county can do so at more favorable terms, taking into consideration costs of refinancing, if any; if county desires to consider such, it will be bound by same provisions and limitations enumerated by subsection (e) of this section that apply to initial financing, including requirement that county obtain at least two written competitive bids. Gamble, Mar. 31, 1993, A.G. Op. #93-0189.

Subsection (m)(viii) of this section exempts from bid requirements items available from only one source; therefore, Central Data Processing Authority is authorized to approve sole-source acquisitions of data processing equipment; accordingly, upon finding that operating system upgrade for Public Employees' Retirement System is available from one source only, acquisition is exempt from competitive bidding requirements. Stebbins, June 2, 1993, A.G. Op. #93-0366.

Board of supervisors could utilize properly bid and awarded term contract with vendor to provide asphalt, labor and equipment to overlay county roads where all preparatory work was to be performed by county employees with county equipment, and vendor was to merely deliver and install asphalt. Trapp, July 14, 1993, A.G. Op. #93-0468.

Board of supervisors may execute change order and pay contractor for any additional work performed pursuant to previously approved change order but when there has been no official action approving in advance additional work by contractor, board of supervisors is without authority to make payment for that additional work. Montgomery, July 15, 1993, A.G. Op. #93-0458.

Statute does not contemplate or permit use of change orders to complete second phase of public construction project where contract and specifications were limited to first phase of construction and it was known during bidding of contract that substantial additional construction not provided for was contemplated at later time; second phase of renovation of hospital was not necessary or incidental to completion of first phase of construction and must be treated as new undertaking outside scope of contract and therefore hospital board had to solicit competitive bids in order to complete second phase of planned renovations. Gwin, July 30, 1993, A.G. Op. #93-0502.

Whether or not emergency situation exists such as to warrant raising this section exemption from bids is factual determination that must be made by municipal governing board, not attorney general. Walker Aug. 18, 1993, A.G. Op. #93-0584.

Governing boards of counties and cities are not required to open bids during official meeting of board; governing boards in their discretion may direct that bids be received and opened on date and at time and place specified by board in request for bids by designated agent of board, such as clerk, deputy clerk or purchasing agent; such agent would, of course, only be authorized to open and announce bids in open, public proceeding where bidders, their representatives and general public could be present, could then be arranged, recorded and tabulated and then presented to governing boards at later official meeting for acceptance or rejection. Dyson Dec. 15, 1993, A.G. Op. #93-0781.

If proposed contract is to survey and reappraise plan proposed by county, Section 27-35-101 expressly requires competitive bidding but if contract is strictly to provide a professional service to county, it does not require competitive bidding under this section. Gex, Jan. 5, 1994, A.G.Op #93-0970.

There is no statutory or precedential prohibition that would preclude convicted felon from bidding on public contracts. Trapp, Feb. 2, 1994, A.G. Op. #94-0038.

Although subsection (n)(ii) of this section provides for purchases to be made pursuant to purchase order from vendor for commodities by board of supervisors, there is no statutory authority within provisions of public purchases law for board of supervisors to expend public funds for membership fees and administrative fees for the privilege of purchasing from an individual vendor. Henley, Feb. 9, 1994, A.G. Op. #93-0914.

Governing authorities have obligation to carefully scrutinize each bid for not only amount of bid, but quality of bid and insolvency or delinquency of taxpayer vendor is factor to consider. Barry, Feb. 24, 1994, A.G. Op. #93-0964.

Subsection (m) of this section would permit a regional airport authority to transfer surplus equipment to the county without the necessity of competitive bids and upon such terms and conditions the authority deems appropriate so long as the authority receives fair market value therefor. Montague, April 20, 1995, A.G. Op. #95-0112.

The awarding of a contract for services only does not necessitate competitive bidding under this section. Benvenutti, May 10, 1995, A.G. Op. #95-0175.

The provisions of Section 19-11-27 shall not apply to a contract, lease or lease-purchase contract entered into pursuant to this section. Gex, May 24, 1995, A.G. Op. #95-0256.

Expenditure of gaming funds for road and bridge construction is subject to the limitation of Section 19-11-27 that the board, during the last three months of the last year of their term, shall not expend or authorize the expenditure of more than 25% of that item of the budget, except contracts, leases or lease-purchase agreements entered into pursuant to this section. Gex, May 24, 1995, A.G. Op. #95-0256.

A governmental entity may exercise an option to renew a contract, entered into pursuant to subsection (n)(i) of this section and for a period of less than twenty-four months, for the time remaining in the twenty-four month period without rebidding the contract. Bradley, June 2, 1995, A.G. Op. #95-0290.

Pursuant to subsection (c) of this section, the county may not advertise and accept bids without proper authorization by the board of supervisors. Before any advertisement for bids is made, the board must adopt a resolution stating its intention to make a purchase, stating the specifications for the purchase and authorizing the bids. Evans, August 16, 1995, A.G. Op. #95-0488.

Subsection (c) of this section, which requires advertisement for competitive sealed bids for certain purchases, makes no signature requirement. Hemphill, October 11, 1995, A.G. Op. #95-0667.

If the one bid offered was for an automobile with a smaller engine than that specified for in the publication, then that bid cannot be accepted by the Town pursuant to subsection (d) of this section because other potential bidders were not put on notice that they might also submit bids for an automobile with a smaller engine. Davies, January 26, 1996, A.G. Op. #96-0019.

Where a change is made by a governing authority in the plans and specifications of a proposed purchase, that any time after advertisement for bids and prior to acceptance, the procedure set out in this section must start anew. Davies, January 26, 1996, A.G. Op. #96-0019.

There is no prohibition found in this section for constructing a proposed conference/convention center building in two phases to be spread over two or three years in the future, so long as it is commercially and fiscally reasonable. Montague, January 26, 1996, A.G. Op. #95-0849.

Since there is no statute similar to Section 21-39-3 on county publishing contracts, the county may negotiate for such contracts, or may bid them out using this section and/or Section 19-3-35 as a guideline. Coleman, March 22, 1996, A.G. Op. #96-0135.

Where the bid specifications are stated in the advertisement itself and not referred to as on file with the clerk, a change in the specifications would require the procedure set out in this section to start anew, but, where the specifications are merely referred to in the advertisement as on file with the clerk, and where the right is reserved in the advertisement to amend the specifications upon reasonable notice to all who have examined or requested copies of those specifications from the clerk, readvertisement for bids following an amendment to the specifications would not be required. McFatter, April 19, 1996, A.G. Op. #96-0168.

Based on this section, the prices of individual items to be purchased by a city for landscape purposes are not controlling in determining the proper purchasing/bidding procedure. Young, June 28, 1996, A.G. Op. #96-0330.

Pursuant to subsection (m)(v) of this section, the governing authority may authorize in general terms the item or items that are to be purchased and the maximum bid authorized, and leave flexibility with the persons attending the public auction as to which particular item should be purchased for the governing authority. Skinner, July 12, 1996, A.G. Op. #96-0422.

The change order procedure under subsection (g) of this section cannot be utilized to amend contracts for the purchase of classroom furniture such as desks and chairs. Wallace, August 30, 1996, A.G. Op. #96-0569.

If proposed contractual changes are within the scope of the construction contract, then the procedure authorized by subsection (g) of this section could be utilized. However, if the contract is a separate one for the purchase of commodities as defined by Section 31-7-1(e), then the change order procedure could not be used. Wallace, August 30, 1996, A.G. Op. #96-0569.

The procedure for requesting proposals set out in subsection (t) of this section applies only to contracts with private waste disposal firms and does not apply to contracts between public agencies and solid waste management authorities, which are governed by Section 17-17-321. Harris, September 6, 1996, A.G. Op. #96-0607.

Pursuant to this section a city may negotiate and sell surplus vehicles to the school district; however, the city must obtain fair market value for the vehicles. The vehicles may not be donated. Hall, September 6, 1996, A.G. Op. #96-0572.

There is no legal authority, statutory or otherwise, for public school districts to delegate the duties set out in this section, concerning advertising and accepting bids for public purchases to a private nonprofit corporation. Cronin, September 20, 1996, A.G. Op. #96-0559.

Under the plain language of Section 31-7-38, if the University of Mississippi Medical Center does organize or participate in a group purchase program with other hospitals, then its purchases of supplies, commodities and equipment made through such program would be exempt from the provisions of Section 31-7-12 and this section. Ranck, October 11, 1996, A.G. Op. #96-0692.

Based on Sections 31-27-3, 31-27-5, 31-27-11, 31-27-13, 31-27-17 and the intent and policy of the Refinancing Act as announced by the Legislature, the certificates evidencing the debt of the District on the building constructed under the Lease-Purchase Act are bonds within the meaning of the statute and may be refunded by the issuance of general obligation refunding bonds. Piazza, October 14, 1996, A.G. Op. #96-0707.

As provided by Section 31-7-38, University Medical Center purchases of supplies, commodities and equipment made through a group purchasing program would be exempt from this section requirements, including competitive bidding. Ranck, November 8, 1996, A.G. Op. #96-0755.

Based on subsection (n)(ii) of this section and § 31-7-109, there is no requirement that a separate receiving report be prepared for each and every delivery, load or shipment of gravel or other similar commodity received. Instead, statutory requirements are satisfied where a signed load ticket or receipt is issued evidencing each delivery, load or shipment received at and on the various delivery points and dates throughout each month. All of these signed tickets or receipts, in turn, are then attached to the receiving report covering the applicable period–a day, a week or any other reasonable time period not exceeding one month. Logan, December 6, 1996, A.G. Op. #96-0768.

If a contract for solid waste collection will exceed $50,000.00, the provisions of subsection (t) of this section must be followed. Fortier, December 6, 1996, A.G. Op. #96-0816.

Amounts allocated for a public construction or renovation project include architectural fees or other costs if those fees and costs are included in the notice to receive written sealed proposals that are directed to bidders. Webb, May 23, 1997, A.G. Op. #97-0277.

In negotiating with the lowest bidder to enter a public contract within allocated funds, subsection (d)(ii) of this section only allows the lowest bidder to reduce its bid to come within the amount of funds allocated and does not authorize an agency or governing authority to make reductions to plans or specifications. Webb, May 23, 1997, A.G. Op. #97-0277.

Subject to review by a court of competent jurisdiction, a municipality has the authority to forgo advertising and bidding requirements and enter into an emergency repair contract upon a finding by the governing authority that an appropriate emergency exists, but the municipality may not forgive monthly rentals due under a lease to pay for such repairs. Shoemake, July 3, 1997, A.G. Op. #97-0395.

Although a construction or architectural firm may not be paid twice for the same services, government entities may contract with a firm that is providing architectural services to also provide construction management services without advertising for bids either by entering into an additional contract or by amending the existing contract. Kilpatrick, Aug. 22, 1997, A.G. Op. #97-0471.

Giving the word "negotiate" its common and ordinary acceptation and meaning, subsection (d)(ii) of this section must be interpreted to allow the governing authority, in negotiating with the lowest bidder to enter a public contract within allocated funds, to make alterations to the plans and specifications for the construction project, as well as the price (modifying opinion to Webb dated May 23, 1997). Guice, September 19, 1997, A.G. Op. #97-0577.

A governing body may, without the necessity of competitive bids, and upon such terms and conditions as the governing authority deems appropriate, sell and transfer property to other governing authorities at prices below market value if the selling governing authority finds as a matter of fact, and encompasses such finding upon its minutes, that the sale at below market value is in the best interest of the taxpayers of the state. Toney, Dec. 12, 1997, A.G. Op. #97-0770.

A county may enter into a contract with a computer company to develop a computer program and may sell its rights to such a program, but a county cannot develop a computer program solely for the purpose of sale for a profit; such a contract is permissible only as an incident to development of a product with a legitimate county or governmental purpose. Meadows, January 9, 1998, A.G. Op. #97-0787.

The only minority set-aside permitted in Mississippi is that which is found in statutory provision requiring that 20% of anticipated annual expenditures by agencies and governing authorities be set aside for purchase of commodities from minority businesses and that set-aside purchases be made from the lowest and best minority business bidder. Smith, January 16, 1998, A.G. Op. #97-0838.

Funds collected, managed, and expended by the Chancery Clerk in connection with a preliminary engineering and environmental assessment phase of a thoroughfare project will be subject to the statute. McAdams, April 17, 1998, A.G. Op. #98-0195.

Where a private group donates funds collected to pay for a monument to the city, the city may not then use the funds donated to have the monument constructed. Bowman, June 12, 1998, A.G. Op. #98-0308.

Pursuant to Section 25-53-5(o), the Mississippi Department of Information Technology Services could utilize the State Contract Price list to acquire equipment, systems, and related services when applicable; however, this would not raise the advertisement for bids threshold to

$10,000.00 as provided in the amendment to this section contained in Senate Bill 2193. Litchliter, June 12, 1998, A.G. Op. #98-0288.

The general purchasing statute, this section, applies to purchases by the Department of Finance and Administration and thus, arguably, to Mississippi Department of Information Technology Services (ITS) under Section 25-53-5(o), but this general statute must yield to the specific requirements of 25-53-5(n), which sets out the threshold for advertising for bids by ITS. Litchliter, June 12, 1998, A.G. Op. #98-0288.

Where a county solicits proposals for disposal of waste, but does not include a request for a proposal that would also include hauling or transportation of the waste, in order to let a contract for collection or transportation of waste, the county would have to solicit proposals first in accordance with the statute. Trapp, June 19, 1998, A.G. Op. #98-0310.

If the expenditure for the collection of trash will exceed $50,000.00, the bidding requirements set forth in subsection (t) must be followed. Bailey, August 21, 1998, A.G. Op. #98-0510.

The occasional rental of heavy equipment by a city does not come within the categories of contract or expenditure listed in the statute and, therefore, so long as the rental equipment is not used in the construction or installation of new facilities, and so does not constitute part of a construction contract, bidding is not required; the equipment use remains in the nature of a service contract which does not come within the restrictions of the statute. Houston, November 20, 1998, A.G. Op. #98-0705.

Where the lowest and best bid received is more than ten percent (10%) above the amount of funds allocated, subsection (d)(ii) does not permit a school district to negotiate with such low bidder in order to enter into a contract. Lowrey, December 23, 1998, A.G. Op. #98-0764.

Where a school board already allocated a sum certain for a building and elected to solicit bids for the building, but did not include all buildings in one bid solicitation, the board could not later add allocations for other unbid construction to its budget allocation and consider the bid already received as within the limits permitted by subsection (d)(ii). Lowrey, December 23, 1998, A.G. Op. #98-0764.

A county purchase clerk may purchase equipment or supplies that are less than $1,500.00 at an equipment/supply auction subject to the subsequent approval of the claim by the board of supervisors. Golding, January 8, 1999, A.G. Op. #98-0784.

A "bid" should be a firm offer to sell for a certain price, and a bid that is made "subject to availability" does not constitute a competitive written bid as required by this section. Golding, January 8, 1999, A.G. Op. #98-0784.

There is no limitation in this section or in case law that sets any absolute numerical or percentage limitation on the amount by which a contract may be increased by change order; the only standard is reasonableness under the circumstances. Griffin, January 29, 1999, A.G. Op. #99-0047.

A correctional facility authority board may sell property to the Department of Corrections for less than fair market value as long as it makes the required determination that such would be in the best interest of the taxpayers of the state and gains approval from Department of Finance and Administration; however, it may not make an outright donation of the property (modified by opinion to Bryant dated June 9, 1999). Osborne, March 26, 1999, A.G. Op. #99-0108.

A municipal contract for the professional services of a tree surgeon is not subject to this section. Bowman, April 30, 1999, A.G. Op. #99-0185.

Section 31-7-1 and this section do not control in the purchase of personal property as part of the acquisition of an existing physical therapy and rehabilitation center. Williams, May 14, 1999, A.G. Op. #99-0215.

A community hospital is authorized to purchase all tangible assets of a physical therapy and rehabilitation practice for no more than fair market value, without regard to this section and the general bid procedures set out therein; however, if real property is to be purchased as a part of this transaction, such purchase must be ratified by the governing authorities constituting the owner or owners of the hospital; further, no consideration may be paid for intangible assets of the practice. Williams, May 14, 1999, A.G. Op. #99-0215.

There is no statutory requirement that a bid to supply commodities to a county must be dated. Fortier, August 20, 1999, A.G. Op. #99-0413.

A city cannot purchase personal property at public auction. Edens, Nov. 12, 1999, A.G. Op. #99-0600.

If a purchase of motor vehicles or other equipment from a federal or state agency or another governing authority at a public auction falls within the parameters of Section 31-7-13(m)(v), the governing authorities may make the purchase. Edens, Nov. 12, 1999, A.G. Op. #99-0600.

Section 61-3-15(c) cannot override the provisions of Section 31-7-13(g) regarding the ability to enter into change orders without board approval. Montague, Dec. 10, 1999, A.G. Op. #99-0647.

A county board of supervisors was required to advertise for the additional services of cleaning around garbage receptacles and hauling off excess garbage since the services would likely involve an expenditure of more than $50,000. Bailey, Jan. 14, 2000, A.G. Op. #2000-0001.

Where the board had developed and documented justification in accordance with the statute for requiring a single make and model of pump, the board could issue specifications limiting bidding to only that single make and model of pump. Compretta, April 28, 2000, A.G. Op. #2000-0199.

A town may not enter into separate contracts in increments that will not exceed $10,000 for the purpose of circumventing the bid requirements of the statute. Ringer, May 1, 2000, A.G. Op. #2000-0223.

The governing authorities of a city were required to advertise pursuant to subsection (t) for the additional service of providing customers with rolling containers, since this service would likely involve an expenditure of more than $50,000.00. Mitchell, June 30, 2000, A.G. Op. #2000-0320.

The statute should be read as requiring only two working days rather than 48 working hours with regard to issuance of addenda to bid specifications. Anderson, July 28, 2000, A.G. Op. #2000-0390.

A contract with a city under which a company would provide the manpower, equipment, and expertise necessary to efficiently recover from a hurricane or other disaster was subject to requirements for advertising and taking bids since only contracts that are made during the time of an emergency are exempt from state laws governing construction, solid waste contracts and purchasing. Mitchell, Oct. 6, 2000, A.G. Op. #2000-0579.

A municipality must comply with the statute if the municipality extends a water system or makes capital improvements to the system. Snyder, Nov. 27, 2000, A.G. Op. #2000-0673.

A county was required to readvertise for proposals in order to amend a solid waste collection and disposal contract to allow the county to utilize the county's credit in order to obtain a more favorable lease-purchase price for garbage carts that would be used by customers. Griffith, Mar. 9, 2001, A.G. Op. #01-0072.

Governing authorities may not accept a bid submitted after the time established for the receipt of bids in the notice, and the governing authorities must make the factual determination as to the actual time that bids are received for a contract for public construction or purchases of equipment. Hatcher, Mar. 16, 2001, A.G. Op. #01-0149.

A contract between Mississippi Department of Corrections and a private medical provider for healthcare services at a private prison is not subject to the state's public bid law. Johnson, Oct. 26, 2001, A.G. Op. #01-0652.

A contract allowing for the placement of a vending machine on the premises of a school under the management of the county school board does not fall within the purchases and/or rentals covered by the statute. Carnathan, Oct. 29, 2001, A.G. Op. #01-0670.

Provided the county board of supervisors has declared an emergency, construction at a regional correctional facility to repair tornado and windstorm damage falls into the category of a repair contract, which does not require bids in emergency situations. Griffith, Nov. 28, 2001, A.G. Op. #01-0744.

A contract between a municipality and a company to manage the city waste water treatment plant, to maintain and repair water and sewer lines, pumps, wells, etc., to read meters and to assist the water department with customer relations falls within the ambit of subsection (r), even if the municipality owns the waste water treatment plant and all of the infrastructure. Cole, Apr. 5, 2002, A.G. Op. #02-0147.

Motor vehicles and equipment purchased at public auction by those entities which come under the public purchasing laws must be offered by a state agency or governing authority of the state of Mississippi. Entrekin, Apr. 12, 2002, A.G. Op. #02-0169.

The Port Authority does not have to require a certificate of responsibility for demolition contractors to bid on public projects; however, in its discretion, it may require contractors to have a certificate of responsibility prior to bidding on such projects. Hunter, May 3, 2002, A.G. Op. #02-0207.

A board of supervisors may establish a policy requiring bidding where state law does not require bidding but cannot establish a purchasing policy that supercedes state law. Crook, Sept. 6, 2002, A.G. Op. #02-0452.

A county office must obtain a purchase order through the centralized purchasing system of the county or a contract for the purchase as authorized by the board of supervisors; moreover, the board ultimately approve the purchase through the claims docket and/or by recital of the contract in their minutes. Crook, Sept. 6, 2002, A.G. Op. #02-0452.

Purchases of commodities under $3,500.00 may be made without competitive bid pursuant to § 31-7-13(a); however, contracts for services require prior approval of the board of supervisors regardless of amount. Crook, Sept. 6, 2002, A.G. Op. #02-0452.

County would have to re-advertise for proposals in order to implement amendments to existing contract terms for waste disposal and collection exceeding $50,000.00. Hammack, Sept. 6, 2002, A.G. Op. #02-0515.

Governing authorities of a municipality must comply with the procedures in Section 31-7-13(r) to enter into a contract for operation, management and maintenance of the city's combined water and sewer system, as such a contract includes services of sewage collection. Jones, Nov. 8, 2002, A.G. Op. #02-0670.

City may not renew an existing contract for sewage collection or disposal of more than $ 50,000.00 but must follow the procedures set forth in Section 31-7-13(r) and request proposals. Jones, Nov. 8, 2002, A.G. Op. #02-0670.

An ordinance which prohibits potential contractors from the bidding process would be inconsistent with Section 31-7-13, which sets forth specific requirements for advertising and soliciting bids. McKissack, Dec. 13, 2002, A.G. Op. #02-0119.

A school district may transfer used school buses for less than fair market value upon a proper finding by the governing body of the selling entity that such a transfer would be in the best interests of the taxpayers. Stephens, Dec. 13, 2002, A.G. Op. #02-0719.

Section 31-7-14 does not include the procedure for contracting for water conservation systems and services, thus, a city was required to make two separate contracts, one under that section for the purchase and installation of energy efficiency equipment and systems, and one under this section for the purchase and installation of water conservation systems. Brown, Dec. 6, 2002, A.G. Op. #02-0708.

The Mississippi Industries for the Blind may sell products to state agencies that are manufactured, processed and produced by it in house, and these transactions are exempt from purchase law requirements set forth in Section 31-7-13. Carballo, Apr. 7, 2003, A.G. Op. 03-0157

The adoption of rules by the Department of Information Technology Services governing exemptions of certain purchases of products or services from governmental entities is within the statutory authority and discretion granted to ITS by the Legislature. Litchliter, May 16, 2003, A.G. Op. 03-0203

The sealed bid requirement of this section cannot be waived. Adams, Aug. 22, 2003, A.G. Op. 03-0411.

The failure to place the proper bid reference number on a bid appears to be a minor informality that can be waived, but it remains a question of fact. Adams, Aug. 22, 2003, A.G. Op. 03-0411.

If a school must disregard the low bidder whose bid did not comply in all respects with the bid proposal, the school may accept the next lowest bid or may reject and rebid the matter. Adams, Aug. 22, 2003, A.G. Op. 03-0411.

A domestic corporation must be duly incorporated and in good standing with the Secretary of State's office. Further, Section 79-4-15.01 requires a foreign corporation to obtain a certificate of authority prior to transacting business in this state. Likewise, a dissolved corporation may not transact business in this state and is not subject to a bid award. Adams, Aug. 22, 2003, A.G. Op. 03-0411.

The Board of Trustees of State Institutions of Higher Learning and the universities under its management and control may hire or contract with a construction manager to perform services without the necessity of advertising for bids. Potter, Oct. 17, 2003, A.G. Op. 03-0562.

Where a performance bond was not included in bid specifications by a school board, the board should treat the bids as if the cost of the bond was included. The board thus has the authority to review the bids, consider the cost of the performance bond as already included in the bid submitted, and make a determination of lowest and best bid and reflect same as a finding on the board's minutes. Beckett, Nov. 14, 2003, A.G. Op. 03-0494.

Educational building corporations (EBCs), are alter egos of the Board of Trustees of State Institutions of Higher Learning and are subject to the purchasing laws of the state of Mississippi in contracting for the acquisition and construction of EBC projects. Mason, Jan. 5, 2004, A.G. Op. 03-0656.

If a bidder presenting a valid certificate of responsibility (COR) number is a company with which Finance and Administration/Bureau of Building has no past experience or past performance history, DFA/BOB may consider past experience with or past performance of the company from which the bidder originated, the bidder's parent company, or the company with which the bidder merged, partnered, or changed names. If DFA/BOB determines it is reasonable to do so and thereafter accepts a bid other than the lowest bid submitted, it must place on its minutes the details of why it did not accept such bid, which details would include detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid. Alternatively, it may reject all bids and readvertise the project. Hill, Jan. 6, 2004, A.G. Op. 03-0649.

A high bidder may not withdraw a bid after the bids are opened unless the bidder advises the public body which has solicited the bids that an honest mistake has been made. Oakes, Jan. 23, 2004, A.G. Op. 03-0640.

Pursuant to the plain language of of subdivision (m)(xxix) of this section, state agencies are permitted to make purchases pursuant to qualified cooperative purchasing agreements. Stringer, Jan. 30, 2004, A.G. Op. 03-0663.

A state agency may designate any of its personnel to be its purchasing agent. Stringer, Jan. 30, 2004, A.G. Op. 03-0663.

The board of aldermen of a town may consider past performance of any of the contractors who have submitted bids for a construction project in making its determination of "lowest and best." If a bid which is not the lowest is accepted, the municipal governing authorities must clearly set out in the official minutes information as described in subdivision (d)(i) of this section. Povall, Feb. 17, 2004, A.G. Op. 04-0040.

Provided the proper factual findings are made and the minutes reflect the detail required by subdivision (d)(i) of this section, then a contract may be awarded to a bidder not having the lowest bid. Eaton, Apr. 9, 2004, A.G. Op. 04-0150.

A city may rely on a term contract to a vendor to provide "hot mix asphalt, per ton - laid in place" for a bond issue paving project. However, the city may, in its discretion, choose to advertise separately for bids on the new project. Tutor, Apr. 23, 2004, A.G. Op. 04-0168.

In the face of the explicit statement in subsection (r) of this section that any "contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars ($ 50,000.00)" be let only after publicly advertising for proposals for those services, an attempt to remove such a contract from the mandate of this section by limiting the services provided to "professional services" would be impermissible. Mullins, July 30, 2004, A.G. Op. 04-0326.

In consideration of demolition and removal service performed by county inmates, the State Board of Education, as governing authority for the Mississippi School for the Blind, may transfer the salvageable surplus materials to the county and such transfer would be exempt from bid requirements as an intergovernmental sale or transfer pursuant to subdivision (m)(v) of this section. Johnson, Aug. 20, 2004, A.G. Op. 04-0233.

Under the provisions of the last paragraph of § 43-33-11, if a public housing authority awards contracts to other entities which will perform construction work in a public housing contract, those entities must comply with grant requirements but are not required to comply with the public purchasing laws, depending on the terms of the grant. Johnson, Oct. 29, 2004, A.G. Op. 04-0528.

The Mississippi Department of Information Technology Services has the authority to establish reasonable rules, regulations and procedures to effectuate the utilization of cooperative purchasing agreements as provided in subdivision (m)(xxix) of this section for information technology purchases. Litchliter, Nov. 30, 2004, A.G. Op. 04-0572.

There no authority for the use of allowances under this section or any other provision of law governing public construction contracts in Mississippi. However, it would be permissible for a public owner, in developing plans and specifications for a public construction project, to instruct potential bidders that certain materials or equipment will be provided by the public owner during the construction process. Such materials or equipment could then be purchased during the course of construction by the public owner in the manner provided by law. Martinson, Dec. 1, 2004, A.G. Op. 04-0586.

Where proposed changes to the original project would result in a substantially different project from that contemplated by the city or prospective bidders at the time that the original project was advertised for bids. Under these circumstances, the additional work cannot lawfully be accomplished through a change order to the existing contract. The city will be required be required to advertise forbids in accordance with this section. Bowman, Jan. 14, 2005, A.G. Op. 04-0647.

There is no prohibition against a public owner advertising for bids for materials and later advertising for the installation of the materials as long as it is not done to circumvent the public purchasing and contracting laws. For example, if the project is split to steer the contract to a particular vendor or contractor, or if the project is split to avoid advertising or obtaining competitive written bids, then such activities would constitute a circumvention of the public purchasing and contracting laws and would be prohibited by subsection (o) of this section. Gabriel, Jan. 28, 2005, A.G. Op. 05-0012.

A governing authority may establish procedures for competitive bidding for purchases involving expenditures of less than $3500. Additionally, purchases of parts for in-house repairs to equipment are exempt from bidding requirement pursuant to Section 31-7-13(m)(iii). Hudson, Mar. 11, 2005, A.G. Op. 05-0073.

A firm manufacturing and selling "specialty vehicles" to public agencies under the provisions of the state public purchasing laws is not required to obtain a Mississippi Motor Vehicle Dealer License. Mangum, Apr. 15, 2005, A.G. Op. 05-0163.

Even though there was no authority for a school board to make a contractual payment to a contractor, the contractor might be entitled to recover in court the fair market value of the services provided, if the circumstances meet the requirements of Section 31-7-57(2). Holly, Sept. 16, 2005, A.G. Op. 05-0397.

The Mississippi Department of Transportation (MDOT) has the authority in times of emergency to utilize the "design-build" process described in Section 65-

1-85 on bridge replacement projects, and, due to the emergency nature of the projects, MDOT is authorized to utilize the "design-build" process on more than one project even if the cost of each individually exceeds $50,000,000.00. Brown, Sept. 27, 2005, A.G. Op. 05-0491.

If a county loans drug testing equipment to another governmental entity, it may charge a "minimal fee" or charge for the cost of materials used in accordance with Section 31-7-13(m)(vi). Nowak, Dec. 16, 2005, A.G. Op. 05-0598.

The Department of Finance and Administration may adopt as its own approved purchase agreements the cooperative agreements that have been developed by other states and local governments. Stringer, May 5, 2006, A.G. Op. 06-0159.

A contract for garbage collection may not contain a fuel adjustment charge. Clayton, Aug. 18, 2006, A.G. Op. 06-0371.

A municipality may operate as its own "general contractor" and may "subcontract out" the work to build, remodel or repair fire stations within its jurisdiction, but only if it acts in accordance with all statutes regarding public construction and public purchasing. Tyner, Oct. 13, 2006, A.G. Op. 06-0498.

Because the preparation or revision of the project specifications by the construction manager hired by a county would result in the manager's firm or a related firm obtaining an unfair advantage over other potential bidders, a county would not be in compliance with public purchasing laws if it accepted a bid from the firm or a related firm. White, Oct. 6, 2006, A.G. Op. 06-0496.

When interpreting the provisions of Section 31-7-13(n)(iii) concerning the language "public construction," the governing authority should refer to the definition of the term "construction" found in Section 31-7-1(g). Nowak, Nov. 27, 2006, A.G. Op. 06-0581.

A term contract may be let for the purpose of performing all road projects, as long as the public work to be performed falls within the definition of "public construction" as defined in Section 31-7-1 and the term contract comports with the provisions of Section 31-7-13, including, but not limited to, Section 31-7-13(n)(iii). Nowak, Nov. 27, 2006, A.G. Op. 06-0581.

A county or county park commission may contract construction and management of a county park to a third party, including a nonprofit corporation, but must first advertise and let the project for public bids under Miss. Code Ann. § 31-7-13. Allen, March 30, 2007, A.G. Op. #07-00106, 2007 Miss. AG LEXIS 95.

RESEARCH REFERENCES

ALR.

Waiver of competitive bidding requirements for state and local public building and construction contracts. 40 A.L.R.4th 968.

Public contracts: authority of state or its subdivision to reject all bids. 52 A.L.R.4th 186.

§ 31-7-13.1. Dual-phase design-build method of construction contracting; two-phase procedure for awarding contracts; compliance with minimum building code standards; awarding stipulated fees.

(1) The method of contracting for construction described in this section shall be known as the "dual-phase design-build method" of construction contracting. This method of construction contracting may be used only when the Legislature has specifically required or authorized the use of this method in the legislation authorizing a project. At a minimum, the determination must include a detailed explanation of why using the dual-phase design-build

method for a particular project satisfies the public need better than the traditional design-bid-build method based on the following criteria:

(a) The project provides a savings in time or cost over traditional methods; and

(b) The size and type of the project is suitable for design-build.

(2) For each proposed dual-phase design-build project, a two-phase procedure for awarding a contract must be adopted. During Phase One, and before solicitation of initial proposals, the agency or governing authority shall develop, with the assistance of an architectural or engineering firm, a scope of work statement that provides prospective offerors with sufficient information regarding the requirements of the agency or governing authority. The scope of work statement must include, but is not limited to, the following information:

(a) Drawings must show overall building dimensions and major lines of dimensions, and site plans that show topography, adjacent buildings and utilities;

(b) Drawings must include information to adequately explain HVAC, electrical and structural requirements;

(c) The scope of work statement also must include building elevations, sections and design details; and

(d) The scope of work statement must include general budget parameters, schedule or delivery requirements, relevant criteria for evaluation of proposals, and any other information necessary to enable the design-builders to submit proposals that meet the needs of the agency or governing authority.

(3) The agency or governing authority shall cause to be published once a week, for at least two (2) consecutive weeks in a regular newspaper published in the county in which the project is to be located, or a newspaper with statewide circulation, a notice inviting proposals for the dual-phase design-build construction project. The proposals shall not be opened in less than fifteen (15) working days after the last notice is published. The notice must inform potential offerors of how to obtain the scope of work statement developed for the project, and the notice must contain such other information to describe adequately the general nature and scope of the project so as to promote full, equal and open competition.

(4) The agency or governing authority shall accept initial proposals only from entities able to provide an experienced and qualified design-build team that includes, at a minimum, an architectural or engineering firm registered in Mississippi and a contractor properly licensed and domiciled in Mississippi for the type of work required. From evaluation of initial proposals under Phase One, the agency or governing authority shall select a minimum of two (2) and a maximum of five (5) design-builders as "short-listed firms" to submit proposals for Phase Two.

(5) During Phase Two, the short-listed firms will be invited to submit detailed designs, specific technical concepts or solutions, pricing, scheduling and other information deemed appropriate by the agency or governing authority as necessary to evaluate and rank acceptability of the Phase Two proposals.

After evaluation of these Phase Two proposals, the agency or governing authority shall award a contract to the design-builder determined to offer the best value to the public in accordance with evaluation criteria set forth in the request for proposals, of which price must be one, but not necessarily the only, criterion.

(6) If the agency or governing authority accepts a proposal other than the lowest dollar proposal actually submitted, the agency or governing authority shall enter on its minutes detailed calculations and a narrative summary showing why the accepted proposal was determined to provide the best value, and the agency or governing authority shall state specifically on its minutes the justification for its award.

(7) All facilities that are governed by this section shall be designed and constructed to comply with standards equal to or exceeding the minimum building code standards employed by the state as required under Section 31-11-33 in force at the time of contracting. All private contractors or private entities contracting or performing under this section must comply at all times with all applicable laws, codes and other legal requirements pertaining to the project.

(8) At its discretion, the agency or governing authority may award a stipulated fee equal to a percentage, as prescribed in the request for proposals, of the project's final design and construction budget, as prescribed in the request for proposals, but not less than two-tenths of one percent (2/10 of 1%) of the project's final design and construction budget, to each short-list offeror who provides a responsive, but unsuccessful, proposal. If the agency or governing authority does not award a contract, all responsive final list offerors shall receive the stipulated fee based on the owner's estimate of the project final design and construction budget as included in the request for proposals. The agency or governing authority shall pay the stipulated fee to each offeror within ninety (90) days after the award of the initial contract or the decision not to award a contract. In consideration for paying the stipulated fee, the agency or governing authority may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful offerors. Notwithstanding the other provisions of this subsection, an unsuccessful short-list offeror may elect to waive the stipulated fee. If an unsuccessful short-list offeror elects to waive the stipulated fee, the agency or governing authority may not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the agency or governing authority from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipulated fee.

(9) This section shall not authorize the awarding of construction contracts according to any contracting method that does not require the contractor to satisfactorily perform, at a minimum, both any balance of design, using an independent professional licensed in Mississippi, and construction of the project for which the contract is awarded.

(10) The provisions of this section shall not affect any procurement by the Mississippi Transportation Commission.

(11) The provisions of this section shall not apply to procurement authorized in Section 59-5-37(3).

HISTORY: Laws, 2007, ch. 494, § 1; Laws, 2008, ch. 544, § 2, eff from and after passage (approved May 9, 2008).

Cross References — Performance and payment bonds required when using design-build or construction manager at risk methods of project delivery, see § 31-5-52.

Penalties for violating the provisions of this chapter, see § 31-7-55.

§ 31-7-13.2. Construction manager at risk method of project delivery; qualifications-based selection procedure for procuring architectural, engineering and land surveying services.

(1) When used in this section, "construction manager at risk" means a method of project delivery in which a construction manager guarantees a maximum price for the construction of a project and in which the governing authority or board, before using this method of project delivery, shall include a detailed explanation of why using the construction manager at risk method of project delivery for a particular project satisfies the public need better than that traditional design-bid-build method based on the following criteria:

(a) The use of construction manager at risk for the project provides a savings in time or cost over traditional methods; and

(b) The size and type of the project is suitable for use of the construction management at risk method of project delivery.

(2) When the construction manager at risk method of project delivery is used:

(a) There may be a separate contract for design services and a separate contract for construction services;

(b) The contract for construction services may be entered into at the same time as a contract for the design services or later;

(c) Design and construction of the project may be in sequential or concurrent phases; and

(d) Finance, maintenance, operation, reconstruction or other related services may be included for a guaranteed maximum price.

(3) When procuring design professional services under a construction manager at risk project delivery method, the agency or governing authority shall procure the services of a design professional pursuant to qualifications-based selection procedures.

(4) Before the substantial completion of the design documents, the agency or governing authority may elect to hire a construction manager.

(5) When procuring construction management services, the agency or governing authority shall follow the qualifications-based selection procedures as outlined in subsection (10) of this section or the competitive sealed proposal procedures as outlined in Section 31-7-13.

(6) The agency or governing authority may require the architect or engineer and the construction manager, by contract, to cooperate in the design, planning and scheduling, and construction process. The contract shall not make the primary designer or construction manager a subcontractor or joint venture partner to the other or limit the primary designer's or construction manager's independent obligations to the agency or governing authority.

(7) Notwithstanding anything to the contrary in this chapter:

(a) Each project for construction under a construction manager at risk contract shall be a specific, single project with a minimum construction cost of Twenty-Five Million Dollars ($25,000,000.00).

(b) Each project under a construction manager at risk contract shall be a specific, single project. For the purposes of this paragraph, "specific, single project" means a project that is constructed at a single location, at a common location or for a common purpose.

(8) Agencies shall retain an independent architectural or engineering firm to provide guidance and administration of the professional engineering or professional architecture aspects of the project throughout the development of the scope, design, and construction of the project.

(9) The state shall, on an annual basis, compile and make public all proceedings, records, contracts and other public records relating to procurement transactions authorized under this section.

(10) For purposes of this section, the "qualifications-based selection procedure" shall include:

(a) Publicly announcing all requirements for architectural, engineering, and land surveying services, to procure these services on the basis of demonstrated competence and qualifications, and to negotiate contracts at fair and reasonable prices after the most qualified firm has been selected.

(b) Agencies or governing authorities shall establish procedures to prequalify firms seeking to provide architectural, engineering, and land surveying services or may use prequalification lists from other state agencies or governing authorities to meet the requirements of this section.

(c) Whenever a project requiring architectural, engineering, or land surveying services is proposed for an agency or governing authority, the agency or governing authority shall provide advance notice published in a professional services bulletin or advertised within the official state newspaper setting forth the projects and services to be procured for not less than fourteen (14) days. The professional services bulletin shall be mailed to each firm that has requested the information or is prequalified under Section 31-7-13. The professional services bulletin shall include a description of each project and shall state the time and place for interested firms to submit a letter of interest and, if required by the public notice, a statement of qualifications.

(d) The agency or governing authority shall evaluate the firms submitting letters of interest and other prequalified firms, taking into account qualifications. The agency or governing authority may consider, but shall not be limited to, considering:

(i) Ability of professional personnel;
(ii) Past record and experience;
(iii) Performance data on file;
(iv) Willingness to meet time requirements;
(v) Location;
(vi) Workload of the firm; and
(vii) Any other qualifications-based factors as the agency or governing authority may determine in writing are applicable.

The agency or governing authority may conduct discussions with and require public presentations by firms deemed to be the most qualified regarding their qualifications, approach to the project and ability to furnish the required services.

(e) The agency or governing authority shall establish a committee to select firms to provide architectural, engineering, and land surveying services. A selection committee may include at least one (1) public member nominated by a statewide association of the profession affected. The public member may not be employed or associated with any firm holding a contract with the agency or governing authority nor may the public member's firm be considered for a contract with that agency or governing authority while serving as a public member of the committee. In no case shall the agency or governing authority, before selecting a firm for negotiation under paragraph (f) of this subsection (10), seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation.

(f) On the basis of evaluations, discussions, and any presentations, the agency or governing authority shall select no less than three (3) firms that it determines to be qualified to provide services for the project and rank them in order of qualifications to provide services regarding the specific project. The agency or governing authority shall then contact the firm ranked most preferred to negotiate a contract at a fair and reasonable compensation. If fewer than three (3) firms submit letters of interest and the agency or governing authority determines that one (1) or both of those firms are so qualified, the agency or governing authority may proceed to negotiate a contract under paragraph (g) of this subsection (10).

(g) The agency or governing authority shall prepare a written description of the scope of the proposed services to be used as a basis for negotiations and shall negotiate a contract with the highest qualified firm at compensation that the agency or governing authority determines in writing to be fair and reasonable. In making this decision, the agency or governing authority shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered. In no case may the agency or governing authority establish a maximum overhead rate or other payment formula designed to eliminate firms from contention or restrict competition or negotiation of fees. If the agency or governing authority is unable to negotiate a satisfactory contract with the firm that is most preferred, negotiations with that firm shall be terminated. The agency or governing authority shall then begin negotiations with the firm that is next preferred. If the agency or governing authority is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be terminated. The agency or governing authority shall then begin negotiations with the firm that is next preferred. If the agency or governing authority is unable to negotiate a satisfactory contract with any of the selected firms, the agency or governing authority shall reevaluate the architectural, engineering, or land surveying services requested, including the estimated value, scope, complexity, and fee requirements. The agency or governing authority shall then compile a second list of not less than three (3) qualified firms and proceed in accordance with the provisions of this section. A firm negotiating a contract with an agency or governing authority shall negotiate subcontracts for architectural, engineering, and land surveying services at compensation that the firm determines in writing to be fair and reasonable based upon a written description of the scope of the proposed services.

(11) The provisions of this section shall not affect any procurement by the Mississippi Transportation Commission.

HISTORY: Laws, 2007, ch. 494, § 2, eff from and after July 1, 2007.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the subsection (5). The reference to "Section 31-17-13" was changed to "Section 31-7-13." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (10)(e) by substituting "paragraph (f) of this subsection (10)" for "paragraph (f) of this section" and an error in an internal reference in subsection (10)(f) by substituting "paragraph (g) of this subsection (10)" for "paragraph (g) of this section." The Joint Committee ratified the correction at its October 19, 2020, meeting.

Cross References — Performance and payment bonds required when using design-build or construction manager at risk methods of project delivery, see § 31-5-52.

Penalties for violating the provisions of this chapter, see § 31-7-55.

§ 31-7-13.3 Fee for electronic submission of bids; fee charged winning bidder for participation in reverse auction.

(1) Any governing authority accepting electronic bid submissions for procurements may charge the bidder a fee, or may require a fee to be paid to a third-party service provider, for an electronic bid submission. The amount of the fee shall not exceed Fifty Dollars ($50.00) per bid.

(2) Any governing authority using the reverse auction method of procurement may charge the winning bidder a fee, or require the winning bidder to pay a fee to a third-party service provider, for participation in a reverse auction. The amount of the fee shall not exceed four percent (4%) of the winning bid amount.

HISTORY: Laws, 2018, ch. 306, § 1, eff from and after passage (approved March 5, 2018).

Editor's note. — Laws of 2018, ch. 306, § 2, effective March 5, 2018, provides: "SECTION 2. Section 1 of this act shall be codified as a separate section within Chapter 7, Title 31, Mississippi Code of 1972."

§ 31-7-14. Public contracts of energy efficiency services [Repealed effective July 1, 2021].

(1)(a) For purposes of this section, the following words and phrases shall have the meaning ascribed herein, unless the context clearly indicates otherwise:

(i) "Division" means the Energy Division of the Mississippi Development Authority.

(ii) "Energy services" or "energy efficient services" means energy efficiency equipment, services relating to the installation, operation and maintenance of equipment and improvements reasonably required to existing or new equipment and existing or new improvements and facilities including, but not limited to, heating, ventilation and air-conditioning systems, lighting, windows, insulation and energy management controls, life safety measures that provide long-term, operating-cost reductions, building operation programs that reduce operating costs, alternative fuel motor vehicles including vehicles that have been converted to such and ancillary equipment related to or associated with the fueling of alternative fuel motor vehicles, or other energy-conservation-related improvements, including improvements or equipment related to renewable energy, water and other natural resources conservation, including accuracy and measurement of water distribution and/or consumption, and other equipment, services and improvements providing verifiable cost savings.

(iii) "Energy services provider" means a person or business with a successful record of documented energy savings projects that is experienced in the design, implementation and installation of energy conservation measures; has the technical capabilities to verify that such measures generate energy and operational cost savings or enhanced revenues; has the ability to guarantee the savings; has the ability to secure or arrange the financing necessary to support the implementation of the energy conservation measures; and is approved by the division.

Approval by the division of an energy services provider shall be granted in a prequalification process.

Such energy services providers may petition the division to review their qualifications and deem them to be qualified for inclusion on a prequalification list if they meet the qualifications set forth by the division.

Any energy services project that has been competitively bid and awarded prior to any change in law shall be allowed to continue under the laws current at the time the project was awarded.

The division shall ensure that small businesses are not disadvantaged in the determination of a qualified energy services provider.

(iv) "Entity" means the board of trustees of any public school district, junior college, institution of higher learning, publicly owned hospital, state agency or governmental authority under this chapter.

(v) "Energy services contract" means an agreement to provide energy services which include, but are not limited to, the design, installation, financing and maintenance or management of the energy systems or equipment in order to improve its energy efficiency. Payments for the contract are not contingent upon the actual savings realized from the equipment.

(vi) "Energy performance contract" means an agreement to provide energy services which includes, but is not limited to, the design, installation, financing and maintenance or management of the energy systems or equipment in order to improve its energy efficiency.

(vii) "Shared-savings contract" means an agreement where the contractor and the entity each receive a preagreed percentage or dollar value of the energy cost savings over the life of the contract.

(viii) "Reduce operating costs" means elimination of future expenses or avoidance of future replacement expenditures as a result of new equipment installed or services performed. Material savings, labor savings, cancelled maintenance contracts, et cetera, shall be considered as being viable to reduce operating costs. Reduce operating costs may be included in the performance contract or energy services agreement solely at the discretion of the entity. A contract that otherwise satisfies the requirements of this section shall satisfy the requirements allowing use of an energy performance, energy services or shared-savings contract even if the sole expense being eliminated is maintenance expense.

(ix) "Capital cost avoidance" means planned capital improvement expenditures that will be avoided through implementation of the energy services project. Capital cost avoidance may be included in an energy services contract or an energy performance contract solely at the discretion of the entity. Capital cost avoidance may be claimed as an annual avoidance or as a one-time avoidance in a specific year of the contract term, depending upon the nature of the avoided capital cost.

(x) "Alternative fuel motor vehicle" means a motor vehicle propelled by alternative fuel either as a dedicated alternative fuel vehicle, as a bi-fuel vehicle using alternative fuel as one of its fuels, or as a dual fuel vehicle using alternative fuel as one of its fuels.

(xi) "Energy conservation measure" means the individual items or components of a large energy services or energy efficient services program.

(xii) "Simple payback period" means the amount of time for the recuperation of the initial investment. The simple payback period is calculated by dividing the initial investment by the annual savings. The simple payback period for any contract shall not exceed twenty (20) years. The simple payback period of an individual energy conservation measure shall not be considered in any evaluation provided the simple payback period for the contract does not exceed twenty (20) years.

(b) An entity may enter into an energy services contract, energy performance contract, shared-savings contract, any of which may contain a lease, or lease-purchase contract for energy efficiency equipment, services relating to the installation, operation and maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities and shall contract in accordance with the following provisions:

(i) The division may assemble a list of prequalified energy services providers. The division shall use objective criteria in the selection process. The criteria for evaluation shall include, but shall not be limited to, the following factors: to assess the capability of the qualified energy services provider in the area of design engineering, installation, maintenance and repairs associated with energy services or guaranteed energy performance contracts; qualifications including engineering depth and experience, post-installation project monitoring, data collection, and verification of and reporting of savings; overall project experience and qualifications; management capability; ability to access long-term sources of project financing; financial health and stability, litigation history with customers and other factors determined by the division to be relevant and appropriate and related to the ability to perform the project. The division shall either accept or reject an application for prequalification from an energy services provider within sixty (60) days after receipt. If the division fails to act within sixty (60) days from the date of receiving an application, then the application shall automatically be accepted and the energy services provider shall be added to the prequalified list.

(ii) An entity shall publicly issue requests for proposals, advertised in the same manner as provided in Section 31-7-13 for seeking competitive sealed bids, concerning the provision of energy efficiency services relating to the installation, operation and maintenance of equipment, improvements reasonably required to existing or new equipment and existing or new improvements and facilities or the design, installation, ownership, operation and maintenance of energy efficiency equipment. Those requests for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal responsibilities, and any other matters as the entity determines to be appropriate for inclusion.

(iii) Upon receiving responses to the request for proposals, the entity may select the most qualified proposal or proposals on the basis of experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the entity and any other relevant factors determined to be appropriate.

(iv) An entity shall negotiate and enter into contracts with the person, persons, firm or firms submitting the proposal selected as the most qualified under this section.

(v) The annual rate of interest paid under any lease-purchase agreement authorized by this section shall not exceed the maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101.

(vi) The maximum lease-purchase term for any equipment acquired under this section shall not exceed the lesser of twenty (20) years or the average useful life of the energy conservation measures from the date the energy conservation measures have been completed and accepted by the governmental unit.

(vii) This subsection shall, with respect to the procurement of energy efficiency services and/or equipment, supersede any contradictory or conflicting provisions of this chapter, and other laws with respect to awarding public contracts.

(2)(a) The division may contract with a party selected under this subsection to provide financing to entities and private "nonprofit" hospitals, to purchase energy efficiency equipment, services relating to the installation, operation and maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities or an energy saving performance contract, energy services contract, or lease-purchase basis. Any energy efficiency lease financing contract entered into by the division before May 15, 1992, shall be valid and binding when the contract was entered into under this subsection.

(b) The entities and private "nonprofit" hospitals that decide to contract for energy efficiency equipment, services relating to the installation, operation and maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities on a lease, energy services contract or lease-purchase basis, may request financial assistance from the division.

(c) The provisions of any energy efficiency lease-purchase agreements authorized under this subsection (2) shall comply with the requirements of subsection (1)(b)(v) of this section. The term of any lease or lease-purchase agreement for energy efficiency services and/or equipment entered into under this section shall not exceed twenty (20) years, commencing on the completion of the installation of equipment or improvements under the contract.

(d) Any entity or private "nonprofit" hospital having approval of the division may borrow money in anticipation of entering into a lease-purchase agreement pursuant to paragraph (b) of this subsection (2). Any borrowing may be upon terms and conditions as may be agreed upon by the borrowing entity and the party advancing interim funds; however, the principal on any borrowing shall be repaid within a period of time not to exceed one hundred eighty (180) days. In borrowing money under this paragraph (d), it is not necessary to publish notice of intention to do so or to secure the consent of the qualified electors, either by election or otherwise. Any borrowing may be negotiated between the parties and is not required to be publicly bid, may be evidenced by negotiable notes or lease and shall not be considered when computing any limitation of indebtedness of the borrowing entity established by law. The principal, interest and costs of incurring any borrowing shall not exceed the principal amount of the final contract or agreement approved by the division, and accepted by the borrowing entity, under paragraph (b) of this subsection (2).

(e) This subsection (2) shall, with respect to the procurement of energy efficiency services and/or equipment, supersede the provisions of any contradictory or conflicting provisions of this chapter, and other laws with respect to awarding public contracts.

(3) All lease-purchase agreements authorized by this section and the income from those agreements shall be exempt from all taxation within the State of Mississippi, except gift, transfer and inheritance taxes.

(4)(a) An entity may contract for energy efficiency equipment services relating to the installation, operation or maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities on a shared-savings basis or performance basis.

(b) If an entity decides to enter into a contract for energy efficiency equipment, services relating to the installation, operation or maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities on a shared-savings basis or performance basis, the entity shall issue a request for proposals or a request for qualifications, as determined necessary by the division, in the same manner as prescribed under subsection (1)(b) of this section. The entity shall notify the division in writing of its intention to issue a request for proposals or a request for qualifications.

(c) The terms of any shared-savings contract, energy services contract, or energy performance contract entered into under this section may not exceed twenty (20) years, commencing on the completion of the installation of equipment or improvements under the contract.

(d) The terms of any shared-savings or energy performance contract entered into under this section must contain a guarantee of savings clause from the company providing energy efficiency equipment services relating to the installation, operation and maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities.

(5)(a) By March 1 and September 1 of each year, each entity that enters into an energy performance contract or shared-savings contract shall report to the division its energy usage by meter in dollars and consumption by fuel type for the previous six-month period determined by the division.

(b) The division shall remove qualified status of an energy services provider that fails to meet the reporting requirements of paragraph (a) of this subsection after two (2) such violations.

(c) Any costs associated with the reporting made under this subsection (5) shall be paid by the energy services provider.

(6) The contract may be construed to provide flexibility to public agencies in structuring agreements entered into hereunder so that economic benefits may be maximized.

(7) This section shall stand repealed on July 1, 2021.

HISTORY: Laws, 1985, ch. 493, § 1; Laws, 1992, ch. 571 § 1; Laws, 1997, ch. 405, § 1; Laws, 1998, ch. 593, § 1; Laws, 2000, ch. 503, § 1; Laws, 2006, ch. 503, § 1; Laws, 2014, ch. 481, § 1; Laws, 2017, ch. 424, § 1, eff from and after July 1, 2017; Laws, 2019, ch. 379, § 1, eff from and after July 1, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the first and last sentences of subsection (2)(d) by substituting "paragraph (b) of this subsection (2)" for "subsection (2)(b) of this section" The Joint Committee ratified the corretion at its October 19, 2020, meeting.

Amendment Notes — The 2019 amendment extended the date of the repealer for the section by substituting "July 1, 2021" for "July 1, 2019" in (7).

Cross References — Competitive bidding procedures, see § 31-7-13.

Penalties for violating the provisions of this chapter, see § 31-7-55.

Authority of agencies to contract for energy efficiency services, see § 31-7-73.

School district's authority to enter into contracts for energy efficiency services, see § 37-7-301.

Authority of junior colleges to enter into contracts for energy efficiency services and equipment, see § 37-29-67.

Authority of Board of Trustees of State Institutions of Higher Learning to enter into contracts for energy efficiency services or equipment, see § 37-101-15.

Energy Management Law, see § 57-39-101 et seq.

Federal Aspects— Class Life Assett Depreciation Range System, see note regarding former § 167(m) under 26 USCS § 167.

OPINIONS OF THE ATTORNEY GENERAL

If professional engineering services and consultation relating to energy efficiency projects under this section do not involve the purchase of commodities, equipment, or furniture or the performance of construction, public advertisement and bids are not required: such contracts may come under the jurisdiction of the Personal Service Contract Review Board, pursuant to Section 25-9-120. Williams, October 9, 1998, A.G. Op. #98-0631.

Community and junior colleges are not "agencies" for purposes of Senate Bill 3113 [Laws, 1998, ch. 593], and this legislation does not require local community and junior colleges to prepare detailed energy management plans and undertake energy efficiency projects. Ray, January 15, 1999, A.G. Op. #98-0767.

Subsection (1) provides an exclusive method for obtaining energy efficiency services, and the University of Mississippi, having entered into a contract for energy efficient services pursuant thereto, was authorized to proceed thereunder regardless of whether the provider under such contract held a certificate of responsibility at the time of submission of its proposal or at the time of entry into the contract. Tyner, Jr., Nov. 19, 1999, A.G. Op. #99-0624.

A school district has no authority to prepay electrical service for a period of ten years. Dukes, Dec. 3, 1999, A.G. Op. #99-0482.

This section does not include the procedure for contracting for water conservation systems and services, thus, a city was required to make two separate contracts, one under this section for the purchase and installation of energy efficiency equipment and systems, and one under Section 31-7-13 for the purchase and installation of water conservation systems. Brown, Dec. 6, 2002, A.G. Op. #02-0708.

The request for proposal required by Section 31-7-14 must include only a term setting forth how the energy efficiency project will be financed, whether it is with the contractor or by other means. Necaise, Apr. 25, 2003, A.G. Op. #03-0183.

Section 31-7-14 exempts the procurement and contracting for installation of energy equipment and improvements from the competitive bid requirements of Section 31-7-13, regardless of the source of financing. Necaise, Apr. 25, 2003, A.G. Op. #03-0183.

Section 31-7-14 does not authorize an amendment and/or supplement to an agreement for the purchase of energy efficiency equipment. Turner, Sept. 22, 2006, A.G. Op. 06-0440, 2006 Miss. AG LEXIS 343; modified by Turner, March 5, 2007, A.G. Op. #07-00132, 2007 Miss. AG LEXIS 88.

A government entity may amend its energy efficiency contract in a manner consistent with Miss. Code Ann. § 31-7-14 where the proposed amendment is within the scope of the original proposal, was contemplated in the original agreement, and would enhance the objectives of the original energy efficiency contract. Turner, March 5, 2007, A.G. Op. #07-00132, 2007 Miss. AG LEXIS 88, modifying Turner, Sept. 22, 2006, A.G. Op. 22, 2006, A.G. Op. # 06-0440, 2006 Miss. AG LEXIS 343.

§ 31-7-14.1. Division of Energy and Transportation authorized to establish energy savings incentive program.

(1) Any agency as defined in this chapter that receives state budgetary consideration and has submitted a detailed energy management plan to the Energy Division of the Department of Economic and Community Development, referred to in this section as "division," as required under Section 57-39-111 shall undertake energy efficiency projects for the purpose of producing energy and/or dollar savings whereby a portion of the savings may be retained by the participating agency. The plan shall describe specific measures to be implemented to reduce the agency's energy consumption by energy unit measure or energy cost. The division shall provide assistance in preparing the detailed energy management plan according to prescribed guidelines and reporting procedures. The plan shall specify a project description of the energy efficiency measures to be undertaken, including, but not limited to, type of measure, cost, estimated savings in dollars and energy units, project and measure location, and terms and conditions of project financing.

(2)(a) Utilizing data submitted under Sections 57-39-107 and 57-39-109, the division shall develop and approve energy consumption baselines before project implementation, if feasible, and measure energy consumption after project implementation considering adjustments for any agency growth or reduction and seasonal variances, and calculate total energy savings. The division shall derive a baseline use allocation to be utilized and submitted in each participating agency's annual budget.

(b) For purposes of this section, "net savings" and "net revenues" mean any funds remaining after payment of project capital costs, including debt service, and other payments and reserves as required by a bond resolution, loan agreement or other financing agreement and payment of project operating and maintenance expenses.

(3) Net savings and net revenues generated from projects shall be apportioned as follows:

(a) Any agency initiating energy savings through the implementation of an energy efficiency project may retain one-half (½) of all such net savings which may be used for any nonrecurring capital projects; and

(b) The remaining net savings and net revenues from conservation projects shall be remitted to the State General Fund.

The Energy Division shall verify the net savings and net revenues on an annual basis.

(4) The use by an agency of net savings and net revenues from energy efficiency projects shall be in addition to, and shall not supplant or replace, funding from traditional sources for their normal operations and maintenance or capital budgets. It is the intent of this subsection to ensure that the agencies receive the full benefit intended by this section, and that the effect will not be diminished by budget adjustments inconsistent with this intent.

HISTORY: Laws, 1992, ch. 584, § 1; Laws, 1998, ch. 593, § 2; Laws, 2001, ch. 518, § 6, eff from and after passage (approved Mar. 30, 2001).

Editor's Notes — Section 57-1-54 provides that wherever the term "Department of Economic and Community Development" appears in any law it shall mean the Mississippi Development Authority.

Former § 57-39-107, referred to in (2)(a), required the department of finance and administration to submit data regarding energy consumption and was repealed by Laws of 2013, ch. 538, § 20, effective July 1, 2013.

Former § 57-39-111, referred to in (1), required state agencies to submit energy management plans to the Mississippi Development Authority and was repealed by Laws of 2013, ch. 538, § 21, effective July 1, 2013.

Laws of 2001, ch. 518, which amended this section, was House Bill No. 776, 2001 Regular Session, and originally passed both Houses of the Legislature on March 24, 2001. The Governor vetoed House Bill 776 on March 30, 2001. The veto was overridden by the State Senate and by the State House of Representatives on March 30, 2001.

Cross References — Energy efficiency services and equipment acquired by school districts, community and junior colleges, institutions of higher learning and state agencies on shared-savings, lease or lease-purchase basis pursuant to this section exempt from bidding requirements, see § 31-7-13.

Energy and transportation planning, see § 57-39-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Community and junior colleges are not "agencies" for purposes of Senate Bill 3113 [Laws, 1998, ch. 593], and this legislation does not require local community and junior colleges to prepare detailed energy management plans and undertake energy efficiency projects. Ray, January 15, 1999, A.G. Op. #98-0767.

§ 31-7-15. Preferences for awarding contracts for commodities; procurement of products made from recovered materials; state agencies to purchase products manufactured or sold by Mississippi Industries for the Blind whenever economically feasible.

(1) Whenever two (2) or more competitive bids are received, one or more of which relates to commodities grown, processed or manufactured within this state, and whenever all things stated in such received bids are equal with respect to price, quality and service, the commodities grown, processed or manufactured within this state shall be given preference. A similar preference

shall be given to commodities grown, processed or manufactured within this state whenever purchases are made without competitive bids, and when practical the Department of Finance and Administration may by regulation establish reasonable preferential policies for other commodities, giving preference to resident suppliers of this state.

(2) Any foreign manufacturing company with a factory in the state and with over fifty (50) employees working in the state shall have preference over any other foreign company where both price and quality are the same, regardless of where the product is manufactured.

(3) On or before January 1, 1991, the Department of Finance and Administration shall adopt bid and product specifications to be utilized by all state agencies that encourage the procurement of commodities made from recovered materials. Preference in awarding contracts for commodities shall be given to commodities offered at a competitive price.

(4) Each state agency is required to procure products made from recovered materials when those products are available at a competitive price. For purposes of this subsection, "competitive price" means a price not greater than ten percent (10%) above the lowest and best bidder. A decision not to procure products made from recovered materials must be based on a determination that such procurement:

(a) Is not available within a reasonable period of time; or

(b) Fails to meet the performance standards set forth in the applicable specifications; or

(c) Is not available at a competitive price.

(5) Whenever economically feasible, each state agency is required to purchase products manufactured or sold by the Mississippi Industries for the Blind.

HISTORY: Codes, 1942, § 9024-08; Laws, 1962, ch. 497, § 8; Laws, 1988 Ex Sess, ch. 14, § 72; Laws, 1990, ch. 507, § 11; Laws, 1992, ch. 414 § 1; Laws, 2005, ch. 473, § 1, eff from and after July 1, 2005.

Cross References — Preference for resident contractors, see § 31-3-21.

Purchases made by state agencies or governing authorities involving items manufactured, processed or produced by the Mississippi Industries for the Blind exempt from § 31-7-13 bidding requirements, see § 31-7-13.

Preference for Mississippi manufacturer of certain equipment capable of being manufactured or assembled in separate units, see § 31-7-16.

Penalties for violations of this chapter, see § 31-7-55.

OPINIONS OF THE ATTORNEY GENERAL

If a bidder presenting a valid certificate of responsibility (COR) number is a company with which Finance and Administration/Bureau of Building has no past experience or past performance history, DFA/BOB may consider past experience with or past performance of the company from which the bidder originated, the bidder's parent company, or the company with which the bidder merged, partnered, or changed names. If DFA/BOB determines it is reasonable to do so and thereafter accepts a bid other than the lowest bid submitted, it must place on its minutes the details of why it did not accept such bid, which details would include detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid. Alternatively, it may reject all bids and readvertise the project. Hill, Jan. 6, 2004, A.G. Op. 03-0649.

§ 31-7-16. Purchase of certain equipment capable of being manufactured or assembled in separate units.

In the event equipment is required which is capable of being manufactured or assembled in separate units such as school bus chassis and bodies or other bodies of equipment installed upon chassis, and there is a manufacturer of such bodies located within the State of Mississippi, a public purchase may be made of such chassis and such body or equipment as separate items.

HISTORY: Laws, 1985, ch. 525, § 36, eff from and after July 1, 1985.

Cross References — Preferences for awarding contracts relating to commodities grown, processed or manufactured in Mississippi, see § 31-7-15.

Penalties for violating the provisions of this chapter, see § 31-7-55.

§ 31-7-17. Repealed.

Repealed by Laws, 1988 Ex Sess, ch. 14 § 74, eff from and after passage (approved August 16, 1988).

[Codes, 1942, § 9024-09; Laws, 1962, ch. 497, § 9]

Editor's Notes — Former § 31-7-17 related to the purchase of goods from the state penitentiary.

§ 31-7-18. Purchase of certain motor vehicles.

In addition to the method of purchasing authorized in this chapter, said governing authorities are hereby authorized to accept the lowest bid received from a motor vehicle dealer domiciled within the county of the governing authority for the purchase of any motor vehicle having a gross vehicle weight rating of less than twenty-six thousand (26,000) pounds that shall not exceed a sum equal to three percent (3%) greater than the price or cost which the dealer pays the manufacturer, as evidenced by the factory invoice for the motor vehicle. In the event said county does not have an authorized motor vehicle dealer, said board or governing authority may, in like manner, receive bids from motor vehicle dealers in any adjoining county.

No purchase of a motor vehicle under the provisions of this section shall be valid unless the purchase is made according to statutory bidding and licensing requirements. Provided, however, that the governing authorities may choose to purchase a motor vehicle from the authorized state contract dealer without having to advertise and receive bids therefor.

No purchase shall be made in excess of the approved state contract price by any of the aforementioned governing authorities when such authorities are situated wholly or in part in the county wherein the authorized state contract dealer for a particular item is domiciled.

HISTORY: Laws, 1980, ch. 440, § 7, eff from and after January 1, 1981.

Cross References — Purchasing practices generally, see § 31-7-11.
Penalties for violating the provisions of this chapter, see § 31-7-55.

§ 31-7-19. Repealed.

Repealed by Laws, 1993, ch. 556, § 6, eff from and after July 1, 1993.

§ 31-7-19. [Codes, 1942, § 9024-10; Laws, 1962, ch. 497, § 13; Laws, 1980, ch. 440, § 8; Laws, 1984, ch. 488, § 159; Laws, 1985, ch. 493, § 7; Laws, 1985, ch. 525, § 19]

Editor's Notes — Former § 31-7-19 required equipment and furniture dealers to furnish list prices and specifications to the Department of Finance and Administration.

§ 31-7-21. Functions of Department of Finance and Administration.

The provisions of this chapter shall neither repeal nor modify the functions of the Governor's Office of General Services as set forth in Sections 31-11-1 through 31-11-89.

HISTORY: Codes, 1942, § 9024-11; Laws, 1962, ch. 497, § 14; Laws, 1968, ch. 506, § 22; Laws, 1980, ch. 440, § 9; Laws, 1988 Ex Sess, ch. 14, § 73, eff from and after passage (approved August 16, 1988).

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Former § 31-11-5, referred to in this section, prohibited nepotism by members of the state building commission and was repealed by Laws of 1983, ch. 469, § 10, effective from and after July 1, 1983 and by Laws of 1984, ch. 488, § 38, effective from and after July 1, 1984.

Former § 31-11-9, referred to in this section, provided for compensation and expenses for members of former state building commission and was repealed by Laws of 1984, ch. 488, § 38, effective from and after July 1, 1984.

Former §§ 31-11-11 through 31-11-23, referred to in this section, established a building commission revolving fund for the transfers of funds appropriated but not spent, and provided for investment of funds, purchase and sale of U.S. securities, deposit of securities purchased under former §§ 31-11-11 through 31-11-19 with state treasurer, and establishment of rules and regulations to carry out the provisions of former §§ 31-11-11 through 31-11-19, and were repealed by Laws of 1984, ch. 488, § 32, effective from and after July 1, 1984.

Former §§ 31-11-51 through 31-11-89, referred to in this section, related to revenue-producing projects and were repealed by Laws of 1984, ch. 488, § 37, effective from and after July 1, 1984.

§ 31-7-23. Rebates, refunds, etc. from vendor to inure to benefit of agency or governing authority.

Any rebates, refunds, coupons, merit points, gratuities or any article of value tendered or received by any agency or governing authority from any vendor of material, supplies, equipment or other articles shall inure to the benefit of the agency or governing authority making the purchase. The agency or governing authority may, in accordance with its best interest, either take delivery of the article of value tendered and use the same or convert it to cash by selling it for its fair and reasonable value, making use of the proceeds from such sale for the exclusive benefit of the agency or governing authority.

HISTORY: Codes, 1942, § 9024.5; Laws, 1958, ch. 480, §§ 1-4; Laws, 1980, ch. 440, § 10, eff from and after January 1, 1981.

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

JUDICIAL DECISIONS

1. In general.

In a federal prosecution for mail fraud, the district judge erred in charging the jury that, under Mississippi law, "any rebates, refunds, coupons, merit points, gratuities, or any article of value tendered or received by any agency from any vendor of materials, supplies, equipment, or other articles shall inure to the benefit of the agency making the purchase," notwithstanding the fact that the instruction was a correct statement of the law. The court should not have given it without further explaining how Mississippi law relates to the federal offense of mail fraud, since the violation of Mississippi law did not ipso facto constitute a violation of the federal mail fraud statute. United States v. Washington, 688 F.2d 953, 1982 U.S. App. LEXIS 25386 (5th Cir. Miss. 1982).

§§ 31-7-25 through 31-7-37. Repealed.

Repealed by Laws, 1980, ch 440, § 28, eff from and after January 1, 1981.

§ 31-7-25. [Codes, 1942, § 9026.5-01; Laws, 1962, ch. 414, § 1; 1970, ch. 421, § 1; Am Laws 1972, ch 496, § 1; 1975, ch. 331; 1978, ch 407, § 1]
§ 31-7-27. [Codes, 1942, § 9026.5-02; Laws, 1962, ch. 414, § 2]
§ 31-7-29. [Codes, 1942, § 9026.5-03; Laws, 1962, ch. 414, § 3]
§ 31-7-31. [Codes, 1942, § 9026.5-04; Laws, 1962, ch. 414, § 4]
§ 31-7-33. [Codes, 1942, § 9026.5-05; Laws, 1962, ch. 414, § 5]
§ 31-7-35. [Codes, 1942, § 9026.5-06; Laws, 1962, ch. 414, § 6]
§ 31-7-37. [Codes, 1942, § 9026.5-07; Laws, 1962, ch. 414, § 7]

Editor's Notes — Former § 31-7-25 related to purchases and contracts for certain hospitals. For present similar provisions, see § 31-7-38.

Former §§ 31-7-27 through 31-7-37 pertained to contracts and purchases by hospitals.

§ 31-7-38. Establishment of group purchasing programs by certain public hospitals and regional mental health centers.

The board of trustees or governing board of any hospital or regional mental health center owned or owned and operated separately or jointly by the State of Mississippi or any of its branches, agencies, departments or subdivisions, or by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, may authorize by resolution the organization and operation of, or the participation in, a group purchasing program with other hospitals or regional mental health centers, for the purchase of supplies, commodities and equipment when it appears to the board of trustees or governing board that such a group purchasing program could or would affect economy or efficiency in their operations. Purchases by hospitals or regional mental health centers participating in group purchasing programs of supplies, commodities and equipment through such programs shall be exempt from the provisions of Sections 31-7-9, 31-7-10, 31-7-11, 31-7-12 and 31-7-13.

HISTORY: Laws, 1975, ch. 330; Laws, 1979, ch. 507; Laws, 1980, ch. 440, § 11; Laws, 1982, ch. 499, § 2; Laws, 1988 Ex Sess, ch. 14, § 66; Laws, 1990, ch. 520, § 1; Laws, 1993, ch. 322, § 1; Laws, 1994, ch. 471, § 1; Laws, 1999, ch. 318, § 1; Laws, 2001, ch. 335, § 1; Laws, 2001, ch. 473, § 1; Laws, 2005, ch. 360, § 1; Laws, 2010, ch. 345, § 1; Laws, 2013, ch. 444, § 1; Laws, 2016, ch. 395, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 1 of ch. 335, Laws of 2001, eff from and after July 1, 2001 (approved March 5, 2001), amended this section. Section 1 of ch. 473, Laws of 2001, eff from and after July 1, 2001 (approved March 23, 2001), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 473, Laws of 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Exception from bid requirements for supplies and equipment purchased by hospitals through group purchase programs, see § 31-7-13.

Penalties for violating the provisions of this chapter, see § 31-7-55.

Regional mental health centers, see §§ 41-19-31 et seq.

OPINIONS OF THE ATTORNEY GENERAL

It was the intent of the Legislature to bring University Medical Center within the provisions of Section 31-7-38 when it gave the Medical Center the " . . . power necessary to enter into group purchasing arrangements . . . " Ranck, October 11, 1996, A.G. Op. #96-0692.

Under the plain language of Section 31-7-38, if the University of Mississippi Medical Center does organize or participate in a group purchase program with other hospitals, then its purchases of supplies, commodities and equipment made through such program would be exempt from the provisions of Sections 31-7-12 and 31-7-13. Ranck, October 11, 1996, A.G. Op. #96-0692.

The Medical Center would not be exempt from the provisions of Sections 31-7-9 and 31-7-11 when participating in a group purchase program, since Section 31-7-38 does not so provide. Ranck, October 11, 1996, A.G. Op. #96-0692.

As provided by Section 31-7-38, University Medical Center purchases of supplies, commodities and equipment made through a group purchasing program would be exempt from Section 31-7-13 requirements, including competitive bidding. Ranck, November 8, 1996, A.G. Op. #96-0755.

Section 31-7-38 does not exempt hospital group purchase programs from the provisions and requirements of Sections 31-7-9 and 31-7-11. These sections enumerate the duties and responsibilities of the Department of Finance and Administration with regard to purchases by state agencies, including University Medical Center. Ranck, November 8, 1996, A.G. Op. #96-0755.

§§ 31-7-39 through 31-7-45. Repealed.

Repealed by Laws, 1980, ch. 440, § 28, eff from and after January 1, 1981.

§ 31-7-39. [Codes, Hemingway's 1917, § 6660; 1930, § 6064; 1942, § 9027; Laws, 1914, ch. 206; Laws, 1946, ch. 375, § 1; Laws, 1950, ch. 292, § 1; Laws, 1950, ch. 392, § 3; Laws, 1958, ch. 362; Laws, 1960, ch. 392, §§ 1-5; Laws, 1962, ch. 268; Laws, 1962, ch. 414; Laws, 1962, ch. 508, § 8; Laws, 1966, ch. 550, § 1; Laws, 1968, ch. 512, § 1; Am Laws, 1973, ch. 426 § 1; Laws, 1974, ch. 541, § 1; Laws, 1975, ch. 470, § 1; Laws, 1976, ch. 491; Laws, 1977, ch. 423; Laws, 1980, ch. 396]

§ 31-7-41. [Codes, Hemingway's 1917, § 6660; 1930, § 6064; 1942, § 9027; Laws, 1914, ch. 206; Laws, 1946, ch. 375, § 1; Laws, 1950, ch. 292, § 1; Laws, 1950, ch. 392, § 3; Laws, 1958, ch. 362; Laws, 1960, ch. 392, §§ 1-5; Laws, 1962, ch. 268; Laws, 1962, ch. 414; Laws, 1962, ch. 508, § 8; Laws, 1966, ch. 550, § 1; Laws, 1968, ch. 512, § 1; Am Laws, 1975, ch. 470 § 2]

§ 31-7-43. [Codes, Hemingway's 1917, § 6660; 1930, § 6064; 1942, § 9027; Laws, 1914, ch. 206; Laws, 1946, ch. 375, § 1; Laws, 1950, ch. 292, § 1; Laws, 1950, ch. 392, § 3; Laws, 1958, ch. 362; Laws, 1960, ch. 392, §§ 1-5; Laws, 1962, ch. 268; Laws, 1962, ch. 414; Laws, 1962, ch. 508, § 8; Laws, 1966, ch. 550, § 1; Laws, 1968, ch. 512, § 1; Am Laws 1975, ch. 470 § 3]

§ 31-7-45. [Codes, Hemingway's 1917, § 6660; 1930, § 6064; 1942, § 9027; Laws, 1914, ch. 206; Laws, 1946, ch. 375, § 1; Laws, 1950, ch. 292, § 1; Laws, 1950, ch. 392, § 3; Laws, 1958, ch. 362; Laws, 1960, ch. 392, §§ 1-5; Laws, 1962, ch. 268; Laws, 1962, ch. 414; Laws, 1962, ch. 508, § 8; Laws, 1966, ch. 550, § 1; Laws, 1968, ch. 512, § 1]

Editor's Notes — Former § 31-7-39 regulated purchases and contracts by county, municipal, school, and water supply district authorities. For provisions governing purchases by a municipality, see § 21-17-1; for central purchases by counties, see §§ 31-7-101 et seq.; for purchases by school districts, see §§ 37-39-1 et seq.; for contract powers of water districts, see § 51-7-25.

Former § 31-7-41 required notice of intention to let contracts or purchases by school districts and public water supply districts. For purchases by school districts, see §§ 37-39-1 et seq; for contract powers of water districts, see § 51-7-25.

Former § 31-7-43 authorized county, municipal and district authorities to enter into a contract or make purchases during an emergency. For provisions governing purchases by a municipality, see § 21-17-1; for central purchases by counties, see §§ 31-7-101 et seq; for purchases by school districts, see §§ 37-39-1 et seq; for contract powers of water districts, see § 51-7-25.

Former § 31-7-45 limited emergency purchases or contracts for counties, municipalities, and districts. For provisions governing purchases by a municipality, see § 21-17-1; for central purchases by counties, see §§ 31-7-101 et seq; for purchases by school districts, see §§ 37-39-1 et seq; for contract powers of water districts, see § 51-7-25.

§ 31-7-47. Preference to resident contractors.

In the letting of public contracts, preference shall be given to resident contractors, and a nonresident bidder domiciled in a state, city, county, parish, province, nation or political subdivision having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidder's state, city, county, parish, province, nation or political subdivision awards contracts to Mississippi contractors bidding under similar circumstances. Resident contractors actually domiciled in Mississippi, be they corporate, individuals or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state, city, county, parish, province, nation or political subdivision of domicile of the nonresident.

HISTORY: Codes, Hemingway's 1917, § 6660; 1930, § 6064; 1942, § 9027; Laws, 1914, ch. 206; Laws, 1946, ch. 375, § 1; Laws, 1950, ch. 292, § 1; ch. 392, § 3; Laws, 1958, ch. 362; Laws, 1960, ch. 392, §§ 1-5; Laws, 1962, chs. 268, 414, 508, § 8; Laws, 1966, ch. 550, § 1; Laws, 1968, ch. 512, § 1; Laws, 1980, ch. 440, § 12; Laws, 1995, ch. 408, § 1, eff from and after passage (approved March 15, 1995).

Cross References — Authorization to contract with industries with respect to solid or hazardous waste treatment projects, see §§ 17-17-105, 17-17-121.

Preference to resident contractors, see also § 31-3-21.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Illustrative cases.

1. In general.

The meaning of the word "state" in § 31-7-47 does not include political subdivisions of the state. Refrigeration Sales Co. v. State ex rel. Segrest, 645 So. 2d 1351, 1994 Miss. LEXIS 566 (Miss. 1994).

2. Illustrative cases.

Though appellant's competitor, a Mississippi company, had not been entitled to a statutory preference since Alabama treated nonresident contractors in the same manner that Mississippi treated nonresident contractors, because the competitor's residence played only a minor part in the school board's decison to award the contract to the competitor, the award was not disturbed on appeal. Rod Cooke Constr. Co. v. Lamar County Sch. Bd., 135 So. 3d 902, 2013 Miss. App. LEXIS 641 (Miss. Ct. App. 2013), cert. denied, 136 So. 3d 437, 2014 Miss. LEXIS 204 (Miss. 2014).

OPINIONS OF THE ATTORNEY GENERAL

If a political subdivision of a foreign state has a bid preference law enforceable against Mississippi vendors, then Mississippi must reciprocally enforce such preference law against vendors of that political subdivision, and resident contractors domiciled anywhere in Mississippi are to be given preference over nonresidents whose home town or county gives them a preference over Mississippi bidders. Yancey, December 11, 1998, A.G. Op. #98-0675.

This section should be broadly construed to include state statutes, municipal ordinances or other rules and regulations of a state or political subdivision. Adams, Aug. 22, 2003, A.G. Op. 03-0411.

Whether bids are equal or substantially equal is a discretionary determination that the public body itself must initially make and that should be explained in the minutes. If it is determined that bids are or are not equal or substantially equal, then the statutory preference provisions in favor of Mississippi bidders apply or do not apply, respectively. Winfield, Jan, 29, 2004, A.G. Op. 03-0501.

§ 31-7-48. Repealed.

Repealed by Laws, 1980, ch. 440, § 28, eff from and after January 1, 1981.
§ 31-7-48. [En, Laws, 1973, ch. 426, § 1]

Editor's Notes — Former § 31-7-48 related to the individual liability of boards of trustees of school districts, boards of directors of public water supply districts and governing authorities of all municipalities for violation of sections governing contracts and purchases.

§ 31-7-49. Purchases under contract.

In placing orders for purchases under bids received and contracts awarded under the provisions of this chapter, the governing authority, by orders entered on its minutes, may authorize its members, or agents designated by its order, to place orders for the purchase of such supplies and materials from time to time during the period covered by the contract, as such supplies and materials are needed. Claims for such supplies so ordered by an individual board member or other duly authorized agent shall not be allowed and paid by the board until such claims shall have been approved in writing by the individual board member or agent who ordered such supplies or the successor to such member or agent.

HISTORY: Codes, 1942, § 9027-01; Laws, 1950, ch. 292, § 2; Laws, 1980, ch. 440, § 13; Laws, 1981, ch. 306, § 3; Laws, 1984, ch. 480, § 4, eff from and after July 1, 1984.

Cross References — Authorization to contract with industries with respect to solid or hazardous waste treatment projects, see §§ 17-17-105, 17-17-121.

Exemption of contract, lease, or lease-purchase agreements from prohibitions and restrictions, see § 31-7-13.

§ 31-7-51. Repealed.

Repealed by Laws, 1993, ch. 556, § 6, eff from and after July 1, 1993.
§ 31-7-51. [Codes, 1942, § 9027-11; Laws, 1956, ch. 373]

Editor's Notes — Former § 31-7-51 required all state agencies and institutions to purchase only cotton mattresses, unless otherwise prescribed by a medical doctor.

§ 31-7-53. Fertilizer.

In making any and all purchases of fertilizer for all state institutions and agencies, the board, officer, or employee given the authority to make such purchases shall take into consideration the chemical analysis and percentage of plant food unit value in such fertilizer in determining the lowest and best bid. No awards of contracts shall be made until the best price is determined on the basis of the chemical analysis as to the plant food unit value of the product, and the contract shall be awarded on the basis of such an analysis of the plant food unit value.

This section does not apply for the purchase of material by research agencies of the state for use in experimental projects.

The state penitentiary board, the board of trustees of the state institutions of higher learning, and any other agency, department, or board of trustees of the State of Mississippi are hereby authorized to purchase all needed quantities of anhydrous ammonia and ammonium nitrate fertilizers available through the facilities of Mississippi State University of Agriculture and Applied Science. Such purchase may be at public or private sale, provided that such fertilizers can be obtained for not more than the price that the same are then available to such board, agency, or department from any other source.

HISTORY: Codes, 1942, §§ 9027-12, 9027-14; Laws, 1956, ch. 142; Laws, 1958, ch. 146.

Cross References — Definition of term "fertilizer," see § 1-3-13.

§ 31-7-55. Penalties.

[For penalties applicable to violations occurring between January 1, 1981, and August 15, 1988, the following provisions govern.]

(1) It is hereby declared to be unlawful and a violation of public policy of the State of Mississippi for any elected or appointed public officer of the state or the executive head of a state board, commission, department, subdivision of the state government or governing authority to make any purchases without the full compliance with the provisions of Chapter 7, Title 31, Mississippi Code of 1972. Any elected or appointed public officer of the state or the executive head of a state board, commission, department, subdivision of the state government or governing authority who violates the provisions of Chapter 7, Title 31, Mississippi Code of 1972 shall be deemed guilty of a misdemeanor and, upon conviction therefor, shall be fined not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00) for each separate offense, or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.

(2) Any person diverting the benefits of any article of value tendered or received by any agency or governing authority to his or her personal use, in violation of Section 31-7-23, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or sentenced to the county jail for not more than six (6) months, or by both such fine and imprisonment, and shall be required to return the money value of the article unlawfully diverted to the agency involved.

[The following provisions apply to violations which occur on or after August 16, 1988.]

(1) It is hereby declared to be unlawful and a violation of public policy of

the State of Mississippi for any elected or appointed public officer of an agency or a governing authority, or the executive head, any employee or agent of an agency or governing authority to make any purchases without the full compliance with the provisions of Chapter 7, Title 31, Mississippi Code of 1972.

(2) Except as otherwise provided in subsection (4) of this section, any person who intentionally, willfully and knowingly violates the provisions of Chapter 7, Title 31, Mississippi Code of 1972, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00) for each separate offense, or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.

(3) Any person who intentionally, willfully and knowingly violates the provisions of subsection (1) of Section 31-7-57 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00), or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.

(4) Any person diverting the benefits of any article of value tendered or received by any agency or governing authority to his or her personal use, in violation of Section 31-7-23, if the value of such article be less than Five Hundred Dollars ($500.00), shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or sentenced to the county jail for not more than six (6) months, or by both such fine and imprisonment, shall be removed from his office or position, and shall be required to return the money value of the article unlawfully diverted to the agency or governing authority involved. If the value of the article be Five Hundred Dollars ($500.00) or more, such person shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or sentenced to the Department of Corrections for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment, shall be removed from his office or position, and shall be required to return the money value of the article unlawfully diverted to the agency or governing authority involved.

(5) The provisions of this section are supplemental to any other criminal statutes of this state.

HISTORY: Codes, 1930, § 6065; 1942, §§ 9024-14, 9024.5, 9027-02, 9028; Laws, 1950, ch. 292, § 3; Laws, 1958, ch. 480, §§ 1-4; Laws, 1970, ch. 353, § 1; Laws, 1980, ch. 440, § 14; Laws, 1988 Ex Sess, ch. 14, § 67, eff from and after passage (approved August 16, 1988).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (1) and (2). The phrase “the provisions of this act” was changed to “the provisions of Chapter 7, Title 31, Mississippi Code of 1972” in two places. The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor's Notes — Laws of 1988, 1st Ex Sess, ch. 14, § 75, effective August 16, 1988, provides as follows:

"SECTION 75. Sections 31-7-55 and 31-7-57, as amended by House Bill 4 (Chapter 14), First Extraordinary Session of 1988, shall apply only to violations of such sections which occur on or after the passage of House Bill 4 (Chapter 14), First Extraordinary Session of 1988."

Cross References — Penalty for unauthorized appropriation on the part of members of the governing body of a municipality, see § 21-39-15.

Prohibition against interest in school contracts on the part of school officials, see § 37-11-27.

Failure on the part of officers to perform their duties, generally, see § 97-11-37.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

If Board of Education votes to approve expenditure to object not authorized by law, then Mississippi Code Sections 31-7-55 and 31-7-57 may create personal liability; if superintendent takes active role in such expenditure then personal liability may accrue for his or her action. Billingsley, Jan. 21, 1994, A.G. Op. #94-0001.

§ 31-7-57. Individual liability for unlawful expenditures; disposition of recovered funds.

(1) Any elected or appointed public officer of an agency or a governing authority, or the executive head, any employee or agent of an agency or governing authority, who appropriates or authorizes the expenditure of any money to an object not authorized by law, shall be liable personally for up to the full amount of the appropriation or expenditure as will fully and completely compensate and repay such public funds for any actual loss caused by such appropriation or expenditure, to be recovered by suit in the name of the governmental entity involved, or in the name of any person who is a taxpayer suing for the use of the governmental entity involved, and such taxpayer shall be liable for costs in such case. In the case of a governing board of an agency or governing authority, only the individual members of the governing board who voted for the appropriation or authorization for expenditure shall be liable under this subsection.

(2) No individual member, officer, employee or agent of any agency or board of a governing authority shall let contracts or purchase commodities or equipment except in the manner provided by law, including the provisions of Section 25-9-120(3), Mississippi Code of 1972, relating to personal and professional service contracts by state agencies; nor shall any such agency or board of a governing authority ratify any such contract or purchase made by any individual member, officer, employee or agent thereof, or pay for the same out of public funds unless such contract or purchase was made in the manner provided by law; provided, however, that any vendor who, in good faith, delivers commodities or printing or performs any services under a contract to or for the agency or governing authority, shall be entitled to recover the fair market value of such commodities, printing or services, notwithstanding some error or failure by the agency or governing authority to follow the law, if the

contract was for an object authorized by law and the vendor had no control of, participation in, or actual knowledge of the error or failure by the agency or governing authority.

(3) The individual members, officers, employees or agents of any agency or governing authority as defined in Section 31-7-1 causing any public funds to be expended, any contract made or let, any payment made on any contract or any purchase made, or any payment made, in any manner whatsoever, contrary to or without complying with any statute of the State of Mississippi, regulating or prescribing the manner in which such contracts shall be let, payment on any contract made, purchase made, or any other payment or expenditure made, shall be liable, individually, and upon their official bond, for compensatory damages, in such sum up to the full amount of such contract, purchase, expenditure or payment as will fully and completely compensate and repay such public funds for any actual loss caused by such unlawful expenditure.

(4) In addition to the foregoing provision, for any violation of any statute of the State of Mississippi prescribing the manner in which contracts shall be let, purchases made, expenditure or payment made, any individual member, officer, employee or agent of any agency or governing authority who shall substantially depart from the statutory method of letting contracts, making payments thereon, making purchases or expending public funds shall be liable, individually and on his official bond, for penal damages in such amount as may be assessed by any court of competent jurisdiction, up to three (3) times the amount of the contract, purchase, expenditure or payment. The person so charged may offer mitigating circumstances to be considered by the court in the assessment of any penal damages.

(5) Any sum recovered under the provisions hereof shall be credited to the account from which such unlawful expenditure was made.

(6) Except as otherwise provided in subsection (1) of this section, any individual member of an agency or governing authority as defined in Section 31-7-1 shall not be individually liable under this section if he voted against payment for contracts let or purchases made contrary to law and had his vote recorded in the official minutes of the board or governing authority at the time of such vote, or was absent at the time of such vote.

HISTORY: Laws, 1974, ch. 444, §§ 1-3; Laws, 1980, ch. 440, § 15; Laws, 1981, ch. 306, § 4; Laws, 1988 Ex Sess, ch. 14, § 68; Laws, 1997, ch. 609, § 8, eff from and after June 29, 1997.

Editor's Notes — Laws of 1988, 1st Ex Sess, ch. 14, § 75, effective August 16, 1988, provides as follows:

"SECTION 75. Sections 31-7-55 and 31-7-57, as amended by House Bill 4 (Chapter 14) First Extraordinary Session of 1988, shall apply only to violations of such sections which occur on or after the passage of House Bill 4 (Chapter 14), First Extraordinary Session of 1988."

Cross References — Punitive damages, generally, see § 11-1-65.

Penalties for violating the provisions of this chapter, see § 31-7-55.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Credit cards.

1. In general.

Expenditures made by city are unlawful when made without express authorization in minutes of city's board, resulting in actual loss to public body. Nichols v. Patterson, 678 So. 2d 673, 1996 Miss. LEXIS 299 (Miss. 1996).

A board of supervisors' liability for compensatory damages for entering into purchase contracts in violation of the method of letting contracts mandated by §§ 19-13-37 [repealed] and 31-7-57 would be limited to the actual loss sustained by the county; thus, the supervisors would be liable for all amounts of principal payment over and above the sums that would have been required under the purchase contract submitted by the lowest bidder, all sums expended for interest, finance charges and related costs, and any other sums as would be necessary to "fully and completely compensate and repay [the county] for any actual loss caused by such unlawful expenditure." Richardson v. Canton Farm Equipment, Inc., 608 So. 2d 1240, 1992 Miss. LEXIS 596 (Miss. 1992).

Remedially, statute law provides that any member of the board of supervisors who causes a contract to be let in violation of state law may be liable individually and on his official bond for compensatory damages in such sum equal to the full amount of such unlawful contract, purchases, expenditures or payment and for penal damages not in a excess of $5,000. Canton Farm Equipment, Inc. v. Richardson, 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

A heavy equipment vendor, which in response to a county board of supervisor's advertisement to purchase 2 backhoes had allegedly submitted the lowest and best bid, was not a mere taxpayer, but was a party claiming direct, adverse effect upon itself as a result of alleged conduct of the supervisors in purchasing the backhoes from the competitor and in arbitrarily and capriciously rejecting its bid, and as such, the vendor had a standing to maintain so much of its action as sought rescission of the purchase agreement between the supervisors and the competitor, as well as that part of its action wherein the vendor sought damages for such sale or a directive that its bid on the backhoes be accepted. Canton Farm Equipment, Inc. v. Richardson, 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

A heavy equipment vendor, which in response to county board of supervisor's advertisement to purchase 2 backhoes had allegedly submitted the lowest and best bid, as a party claiming a direct, adverse effect upon itself as a result of the alleged conduct of the supervisors in purchasing the backhoes from a competitor and in arbitrarily and capriciously rejecting its bid, had standing as a taxpayer and as a private attorney general to seek an order requiring the supervisors to repay to the county the amounts expended on the contract with the competitor, and, in addition, to assess the supervisors with statutory penalties. Canton Farm Equipment, Inc. v. Richardson, 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

2. Credit cards.

In a case attempting to recoup payment from a former mayor, there was substantial evidence to support a finding that the mayor failed to provide itemization and documentation for credit card reimbursements; therefore, he was liable. The mayor's argument that an auditor was required to show an "actual loss" besides the money being paid was rejected. Davis v. State ex rel. Hood, 198 So. 3d 367, 2015 Miss. App. LEXIS 657 (Miss. Ct. App. 2015), cert. denied, 203 So. 3d 596, 2016 Miss. LEXIS 379 (Miss. 2016).

Mayor had to repay expenditures charged on a city's credit card because he failed to comply with a statute requiring receipts be given each month to a municipal clerk. Moreover, auditor was not required to show an "actual loss" beyond money being paid. Davis v. State ex rel. Hood, 198 So. 3d 367, 2015 Miss. App. LEXIS 657 (Miss. Ct. App. 2015), cert. denied, 203 So. 3d 596, 2016 Miss. LEXIS 379 (Miss. 2016).

OPINIONS OF THE ATTORNEY GENERAL

Supervisors incur individual liability for unlawful expenditures pursuant to Section 31-7-57 even if president signed claims docket as required by Section 19-13-31; supervisors do not incur individual liability under Section 31-7-57 for lawful expenditures even if president failed to sign claims docket. Barry Sept. 22, 1993, A.G. Op. #93-0519.

If Board of Education votes to approve expenditure to object not authorized by law, then Mississippi Code Sections 31-7-55 and 31-7-57 may create personal liability; if superintendent takes active role in such expenditure then personal liability may accrue for his or her action. Billingsley, Jan. 21, 1994, A.G. Op. #94-0001.

Section 31-7-57 provides for liability and it is irrelevant whether an error was made by making an unlawful budget allocation or whether an error was made in approving a claim pursuant to such appropriation. Haque, April 12, 1996, A.G. Op. #96-0184.

Section 31-7-57 creates a right of action on the part of vendors whereby those vendors who have acted in good faith may seek relief in a court of competent jurisdiction. Wallace, May 3, 1996, A.G. Op. #96-0119.

Even though there was no authority for a school board to make a contractual payment to a contractor, the contractor might be entitled to recover in court the fair market value of the services provided, if the circumstances meet the requirements of Section 31-7-57(2). Holly, Sept. 16, 2005, A.G. Op. 05-0397.

RESEARCH REFERENCES

ALR.

Standard of proof as to conduct underlying punitive damage awards – modern status. 58 A.L.R.4th 878.

Private attorney general doctrine – State cases. 106 A.L.R.5th 523.

Am. Jur.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 288, 291 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 348 et seq., 391.

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Forms 111 et seq.

CJS.

67 C.J.S., Officers and Public Employees §§ 259 et seq.

§ 31-7-59. Purchase by municipalities from United States General Services Administration.

(1) Any municipality of over one hundred thousand (100,000) population, according to the latest decennial census and qualified to do so, is hereby empowered to purchase from the General Services Administration of the United States of America, without advertising for bids, any and all articles of supplies and equipment necessary for the operation of said municipality so long as the purchase price of such articles is below the purchase price of similar articles on a state contract accepted by the Office of General Services.

(2) The aforesaid supplies and equipment may likewise be purchased from the General Services Administration without advertising for bids even though the Office of General Services does not have same listed on statewide contracts so long as the purchase price thereof is ten percent (10%) below the latest purchase price of comparable supplies and equipment.

HISTORY: Laws, 1974, ch. 388, §§ 1, 2; Laws, 1984, ch. 488, § 160; Laws, 1985, ch. 525, § 20, eff from and after July 1, 1985.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

Federal Aspects— General Services Administration of the United States of America generally, 40 USCS §§ 751 et seq.

RESEARCH REFERENCES

Am. Jur.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 493 et seq.

CJS.

63 C.J.S., Municipal Corporations §§ 894 et seq.

§ 31-7-61. Governmental purchases of foreign beef; prohibition against.

It shall be unlawful for any person knowingly to purchase or to authorize or requisition the purchase of beef other than beef raised and produced within the United States when such purchase is to be paid by the state government or any of its political subdivisions out of public funds of any nature. However, all canned meats not available which are processed in the United States shall be exempt from Sections 31-7-61 through 31-7-65.

HISTORY: Laws, 1975, ch. 345, § 1, eff from and after passage (approved March 12, 1975).

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

Penalties for purchase of foreign beef, see § 31-7-63.

§ 31-7-63. Governmental purchases of foreign beef; penalties.

Any person who violates the provisions of Section 31-7-61 shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than thirty (30) days or by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). In addition to any criminal sanction authorized herein, a civil proceeding may be brought by a district attorney or county prosecuting attorney for recovery of funds paid out in violation of this section.

HISTORY: Laws, 1975, ch. 345, § 2, eff from and after passage (approved March 12, 1975).

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

§ 31-7-65. Governmental purchases of foreign beef; commissioner of agriculture and commerce to give notice.

The commissioner of agriculture and commerce of the State of Mississippi shall notify all state agencies, political subdivisions or public institutions within the State of Mississippi as to the provisions of Sections 31-7-61 through 31-7-65.

HISTORY: Laws, 1975, ch. 345, § 3, eff from and after passage (approved March 12, 1975).

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.
Penalties for purchase of foreign beef, see § 31-7-63.

§§ 31-7-67 through 31-7-71. Repealed.

Repealed by Laws, 1980, ch. 440, § 28, eff from and after January 1, 1981.
§ 31-7-67. [En Laws, 1976, ch. 466, § 1]
§ 31-7-69. [En Laws, 1976, ch. 466, § 2]
§ 31-7-71. [En Laws, 1976, ch. 466, § 3]

Editor's Notes — Former § 31-7-67 authorized the purchase of certain commodities by local governments and school districts without advertising for bids where the price of the commodities does not exceed the approved state contract price.

Former § 31-7-69 authorized local governments and school districts to purchase motor vehicles from local dealers at prices not in excess of three percent (3%) over the dealer invoice cost, subject to bidding and licensing requirements.

Former § 31-7-71 prohibited local governments and school districts from making any purchase exceeding the approved state contract price when an authorized state contract dealer for the item purchased is located in the county.

§ 31-7-73. Authority of state agencies to contract for energy efficiency services.

Any state agency, as defined in Section 31-7-1, Mississippi Code of 1972, shall be authorized and empowered, in its discretion, to enter into an energy performance contract, energy services contract, on a shared-savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14.

HISTORY: Laws, 1985, ch. 493, § 2; Laws, 2014, ch. 481, § 2, eff from and after July 1, 2014.

Cross References — Contracts for energy efficiency services, see § 31-7-14.
Penalties for violating the provisions of this chapter, see § 31-7-55.

PUBLIC CONTRACTS FOR PURCHASE OF MEAT [REPEALED]

Sec.
31-7-75 through 31-7-83. Repealed.

§§ 31-7-75 through 31-7-83. Repealed.

Repealed by Laws, 1997, ch. 312, § 2, eff from and after July 1, 1997.
§ 31-7-75. [Laws, 1988, ch. 501, § 1].
§ 31-7-77. [Laws, 1988, ch. 501, § 2].
§ 31-7-79. [Laws, 1988, ch. 501, § 3].
§ 31-7-81. [Laws, 1988, ch. 501, § 4].
§ 31-7-83. [Laws, 1988, ch. 501, § 5].

Editor's Notes — Former §§ 31-7-75 through 31-7-83 provided for the regulation of public contracts for the purchase of meat.

IMPLEMENTATION OF CENTRAL PURCHASING BY COUNTIES

Sec.	
31-7-101.	Implementation of central purchase system; establishment of department of purchasing; appointment of purchase clerk and receiving clerk.
31-7-103.	General responsibility of purchase clerk; central purchase system to comply with requirements of State Department of Audit; purchases of $1,000.00 or less.
31-7-105.	Procedure on bids.
31-7-107.	Inventory control.
31-7-109.	Receiving reports.
31-7-111.	Custody of records.
31-7-113.	State department of audit to design and prescribe forms and systems.
31-7-115.	Audit reports.
31-7-117.	Repealed.
31-7-118.	County employees permitted to also serve as purchase clerk, receiving clerk or inventory clerk.
31-7-119.	Board of supervisors not to purchase, order or receive products for county; exceptions.
31-7-121 and 31-7-123.	Repealed.
31-7-124.	Bond of purchase clerk, receiving clerk and inventory control clerk.
31-7-125.	Repealed.
31-7-127.	Enforcement.
31-7-129.	Repealed.

§ 31-7-101. Implementation of central purchase system; establishment of department of purchasing; appointment of purchase clerk and receiving clerk.

From and after the first Monday of January 1989, the supervisors of each county in the state shall establish a central purchase system. The central purchase system shall be administered by a county department of purchasing headed by a purchase clerk who, unless the chancery clerk is appointed by the board of supervisors as purchase clerk as hereinafter authorized, shall be appointed by the county administrator, with the approval of the board of supervisors, in any county required to operate under a countywide system of road administration, or who shall be appointed by the board of supervisors in any other county. The purchase clerk shall not be a member of the board of supervisors. The purchase clerk shall be the director of the department of purchasing. No person shall serve as the purchase clerk who, within one (1) year after his appointment, does not receive certification from the State Auditor as having successfully completed the professional education program offered for purchase clerks pursuant to Section 19-3-77.

The department of purchasing shall purchase all equipment, heavy equipment, machinery, supplies, commodities, materials and services used by any office or department of the county except for those offices or departments whose expenditures are not required by law to be approved by the board of supervisors. The purchase clerk may, subject to the approval of the entity which appointed him, hire personnel necessary to operate the department of purchasing efficiently. Unless the chancery clerk is appointed by the board of supervisors as receiving clerk as hereinafter authorized, the county administrator, with the approval of the board of supervisors, in any county required to operate under the countywide system of road administration, or the board of supervisors in any other county, shall appoint a receiving clerk, who shall not be a member of the board of supervisors. Assistant receiving clerks, when necessary, may be appointed by the receiving clerk subject to the approval of the entity which appointed him. No person shall serve as the receiving clerk who, within one (1) year after his appointment, does not receive certification from the State Auditor as having successfully completed the professional education program offered for receiving clerks pursuant to Section 19-3-77. The receiving clerk and his assistants shall be solely responsible for accepting the delivery of all equipment, heavy equipment, machinery, supplies, commodities, materials and services purchased by the county.

The purchase clerk shall disapprove any purchase requisitions which, in his opinion, are not in compliance with the purchasing laws of the state.

The board of supervisors may designate the chancery clerk, with his consent, to serve as the purchase clerk or assistant purchase clerk or as the receiving clerk or assistant receiving clerk; however a chancery clerk designated as purchase clerk or assistant purchase clerk may not also serve as receiving clerk or assistant receiving clerk, and a chancery clerk designated as receiving clerk or assistant receiving clerk may not serve as purchase clerk or assistant purchase clerk. Neither the purchase clerk nor any assistant purchase clerks shall serve as the receiving clerk or as an assistant receiving clerk.

When the chancery clerk serves as county administrator and purchase clerk or assistant purchase clerk, the receiving clerk and any assistant receiving clerks shall be appointed by and serve at the will and pleasure of the board of supervisors.

HISTORY: Laws, 1974, ch. 513, § 1; Laws, 1988 Ex Sess, ch. 14, § 21, eff from and after January 2, 1989.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal

Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

General responsibilities of purchase clerk, see § 31-7-103.

County employees permitted to also serve as purchase clerk, receiving clerk or inventory clerk, see § 31-7-118.

Acquisition of public buildings, facilities, and equipment through rental contracts, see §§ 31-8-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1.-3. [Reserved for future use.]
4. Under former § 31-7-39.

1.-3. [Reserved for future use.]

4. Under former § 31-7-39.

Where a county board of supervisors has advertised to purchase heavy equipment, a vendor who submits a bid has the right to expect that the board, if it accepts any bid at all, will accept the lowest and best bid and, if such vendor can prove that its bid was lowest and best and that the board's action in accepting a competitor's bid over its is arbitrary and capricious, such vendor is entitled to relief. Canton Farm Equipment, Inc. v. Richardson, 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

This section [Code 1942, § 9027] neither contemplates nor condones the use of public equipment, materials or labor on private projects for the benefit of individual landowners. Saxon v. Harvey, 190 So. 2d 901, 1966 Miss. LEXIS 1422 (Miss. 1966).

Members of a county hospital board are not personally liable for amounts paid in good faith to the Administrator for traveling expenses in performance of his duties, to an employee for special service rendered while not on salary, for purchases of supplies without competitive bids, and for flowers purchased, as an expression of sympathy, for funerals of members of families of hospital employees. Golding v. Salter, 234 Miss. 567, 107 So. 2d 348, 1958 Miss. LEXIS 530 (Miss. 1958).

County hospital trustees may not make themselves an allowance for services, where the law makes no provision therefor, although they act in good faith and from honest motives. Golding v. Salter, 234 Miss. 567, 107 So. 2d 348, 1958 Miss. LEXIS 530 (Miss. 1958).

A special act of the Legislature authorizing the board of supervisors of a designated county to reimburse a former sheriff thereof for expense incurred in purchasing disinfectants for the county jail, which claim had previously been disallowed by the board of supervisors, was void as being within the prohibition of this section [Code 1942, § 9027] in suspending the operation of a general law (Code 1942, § 9027) relating to the purchase of supplies by the county which expressly requires contracts for the purchase of supplies, etc., to be let upon competitive bids and prohibits any individual members of the board from making such purchases. Beall v. Board of Supervisors, 191 Miss. 470, 3 So. 2d 839, 1941 Miss. LEXIS 171 (Miss. 1941).

This section [Code 1942, § 9027] is mandatory. Beall v. Board of Supervisors, 191 Miss. 470, 3 So. 2d 839, 1941 Miss. LEXIS 171 (Miss. 1941).

The manifest purpose of the statute is to safeguard public contracts, and secure competitive bids from parties interested, to secure to the public fair contracts, and the advantages of competition. Bigham v. Lee County, 184 Miss. 138, 185 So. 818, 1939 Miss. LEXIS 48 (Miss. 1939).

Where supervisors awarded lumber dealer, as lowest bidder, contract for lumber for year, and in violation of contract purchased lumber from others, dealer's suit for unliquidated damages for breach of contract held not maintainable. Board of Sup'rs v. Payne, 175 Miss. 12, 166 So. 332, 1936 Miss. LEXIS 10 (Miss. 1936).

In proceeding for mandamus to compel payment of claim for goods sold county which was ordered paid by the board of county supervisors, where order failed to disclose facts showing that contract of purchase was valid, Supreme Court could not presume that board of supervisors had complied with law regulating purchases by counties. Jackson Equipment & Service Co. v. Dunlop, 172 Miss. 752, 160 So. 734, 1935 Miss. LEXIS 163 (Miss. 1935).

Recovery cannot be had for disinfectants purchased by sheriff for county jail, courthouse, and poorhouse without authorization. American Disinfecting Co. v. Oktibbeha County, 110 So. 869 (Miss. 1927).

OPINIONS OF THE ATTORNEY GENERAL

The purchasing clerk is in the executive branch of government. Crook, Sept. 12, 2002, A.G. Op. #02-0525.

It is within the authority and discretion of the purchase clerk to determine the propriety of a requisition and to approve or deny same. Crook, Sept. 12, 2002, A.G. Op. #02-0525.

Alleged violations of the countywide system of road administration, codified at Miss. Code Ann. §§ 19-2-1 et seq., should be filed with the State Auditor, who has the duty to enforce the provisions of the county unit system by issuing certificates of noncompliance. Brooks, March 2, 2007, A.G. Op. #07-00093, 2007 Miss. AG LEXIS 87.

§ 31-7-103. General responsibility of purchase clerk; central purchase system to comply with requirements of State Department of Audit; purchases of $1,000.00 or less.

The purchase clerk shall be responsible as hereinafter provided for the purchase and acquisition of all equipment, heavy equipment, machinery, supplies, commodities, materials and services to be acquired for the county from successful bidders or other vendors, as authorized by law. The central purchase system shall comply with the requirements prescribed by the State Department of Audit under the authority of Section 7-7-211 and in accordance with Section 31-7-113, and the purchase clerk shall be responsible for the maintenance of such system. No requisition to purchase, purchase order or receiving report shall be required for the purchase of any item or services with an acquisition cost of not more than Two Thousand Dollars ($2,000.00) in the aggregate; however, the invoice for every such purchase shall be signed by the department head or his or her designee, or a receipt signed by the person making the purchase shall be attached to the invoice and forwarded to the purchase clerk. No claim based on any such purchase shall be approved except after compliance with the provisions of this section.

HISTORY: Laws, 1974, ch. 513, § 2; Laws, 1975, ch. 359; Laws, 1984, ch. 312; Laws, 1985, ch. 514, § 12; Laws, 1988 Ex Sess, ch. 14, § 22; Laws, 1994, ch. 476, § 1; Laws, 2008, ch. 340, § 1; Laws, 2012, ch. 420, § 1; Laws, 2017, ch. 429, § 1, eff from and after July 1, 2017; Laws, 2020, ch. 349, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "Two Thousand Dollars ($2,000.00)" for "One Thousand Five Hundred Dollars ($1,500.00)."

Cross References — Powers and duties of Department of Audit, see § 7-7-211.

Penalties for violating the provisions of this chapter, see § 31-7-55.

State Department of Audit to design and prescribe forms and system of records necessary for maintenance of central purchase, receiving and inventory systems, see § 31-7-113.

Bond of purchase clerk, see § 31-7-124.

JUDICIAL DECISIONS

1. In general.

Receipt by a county supervisor of an invoice for services claimed to have been rendered violated the provisions of § 31-7-103 in that the county was first invoiced for services, after which a requisition and purchase order were made to match the invoice. Cumbest v. State, 456 So. 2d 209, 1984 Miss. LEXIS 1754 (Miss. 1984).

OPINIONS OF THE ATTORNEY GENERAL

It is within the authority and discretion of the purchase clerk to determine the propriety of a requisition and to approve or deny same. Crook, Sept. 12, 2002, A.G. Op. #02-0525.

§ 31-7-105. Procedure on bids.

Upon acceptance of any bid by the board of supervisors, as provided in Section 31-7-13, the clerk of the board of supervisors, shall forthwith deliver to the purchase clerk a certified copy of such accepted bid. The accepted bid or offer to furnish equipment, heavy equipment, machinery, supplies, commodities, materials or services shall constitute the sole source for such purchase, unless such purchase is otherwise authorized by law. The term "lowest and best bid" shall not include any person, firm, partnership or corporation other than the person, firm, partnership or corporation actually submitting the bid determined to be the lowest and best bid.

HISTORY: Laws, 1974, ch. 513, § 3; Laws, 1980, ch. 440, § 16; Laws, 1988 Ex Sess, ch. 14, § 23, eff from and after January 2, 1989.

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

Amount of a bond by a successful bidder for a contract for the purchase of equipment by or on behalf of the Mississippi Transportation Commission, see § 65-1-85.

RESEARCH REFERENCES

ALR.

Public contracts: authority of state or its subdivision to reject all bids. 52 A.L.R.4th 186.

§ 31-7-107. Inventory control.

In addition to the required central purchase system, from and after the first Monday in January 1989, each county shall establish and maintain an inventory control system pursuant to requirements prescribed by the State Department of Audit under the authority of Section 7-7-211 and in accordance with Section 31-7-113; provided, however, that not more than a sixty (60) day inventory of supplies, commodities and materials shall be kept on hand unless otherwise approved by the board of supervisors. The inventory control clerk shall be employed or designated in the same manner and by the same entity which employs or designates the purchase clerk. The inventory control clerk shall be responsible for the maintenance of such system and such other personnel as may be required for the efficient operation of the inventory control system and shall not be a member of the board of supervisors. No person shall serve as the inventory control clerk who, within one (1) year after his appointment, does not receive certification from the State Auditor as having successfully completed the professional education program offered for inventory control clerks pursuant to Section 19-3-77. The opening entries of such system shall be compiled by the inventory control clerk from a physical inventory which the board of supervisors shall cause to be made of all property of the county by April 1, 1989, and such beginning inventory shall be recorded in the minutes of the board of supervisors. The clerk of the board of supervisors shall deliver to the inventory control clerk a certified copy of such inventory within seven (7) days after the acceptance of the beginning inventory by the board of supervisors. Following acceptance of the beginning inventory, the inventory control clerk, pursuant to regulations promulgated by the State Auditor, shall perform physical inventories of assets of the county on or before October 1 of each year and shall file with the board of supervisors, in triplicate, a written report of such inventory. The clerk of the board of supervisors shall keep the original of each inventory report so filed by the inventory control clerk as a permanent record of the county and shall forward a copy to the State Department of Audit not later than October 15. In a separate report to the clerk of the board, the inventory control clerk shall list additions to and deletions from the annual inventory report and shall also list items unaccounted for from the previous annual inventory report.

HISTORY: Laws, 1974, ch. 513, § 4; Laws, 1988 Ex Sess, ch. 14, § 24, eff from and after January 2, 1989.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Powers and duties of Department of Audit, see § 7-7-211.

Penalties for violating the provisions of this chapter, see § 31-7-55.

State Department of Audit to design and prescribe forms and system of records necessary for maintenance of central purchase, receiving and inventory systems, see

§ 31-7-113.

Bond of Inventory control clerk, see § 31-7-124.

OPINIONS OF THE ATTORNEY GENERAL

Alleged violations of the countywide system of road administration, codified at Miss. Code Ann. §§ 19-2-1 et seq., should be filed with the State Auditor, who has the duty to enforce the provisions of the county unit system by issuing certificates of noncompliance. Brooks, March 2, 2007, A.G. Op. #07-00093, 2007 Miss. AG LEXIS 87.

§ 31-7-109. Receiving reports.

The receiving clerk or his assistants shall, upon proper delivery of equipment, heavy equipment, machinery, supplies, commodities, materials or services, acknowledge receipt of goods in compliance with a receipting system prescribed by the State Department of Audit under the authority of Section 7-7-211 and in accordance with Section 31-7-113, and the receiving clerk shall be responsible for the maintenance of such system.

HISTORY: Laws, 1974, ch. 513, § 5; Laws, 1975, ch. 360; Laws, 1988 Ex Sess, ch. 14, § 25, eff from and after January 2, 1989.

Cross References — Powers and duties of Department of Audit, see § 7-7-211.

Accounting for commodities purchased by governing authorities pursuant to provisions on bidding requirements, see § 31-7-13.

Penalties for violating the provisions of this chapter, see § 31-7-55.

State Department of Audit to design and prescribe forms and system of records necessary for maintenance of central purchase, receiving and inventory systems, see § 31-7-113.

Bond of receiving clerk, see § 31-7-124.

OPINIONS OF THE ATTORNEY GENERAL

Based on Section 31-7-13(n)(ii) and 31-7-109, there is no requirement that a separate receiving report be prepared for each and every delivery, load or shipment of gravel or other similar commodity received. Instead, statutory requirements are satisfied where a signed load ticket or receipt is issued evidencing each delivery, load or shipment received at and on the various delivery points and dates throughout each month. All of these signed tickets or receipts, in turn, are then attached to the receiving report covering the applicable period–a day, a week or any other reasonable time period not exceeding one month. Logan, December 6, 1996, A.G. Op. #96-0768.

§ 31-7-111. Custody of records.

Except as otherwise provided in Section 25-61-11.2, such records, reports, supporting documents or data compiled, maintained, protected or otherwise in the custody of either the purchase clerk or the inventory control clerk shall be made freely available to the other immediately upon request. Such records, reports, supporting documents or data shall be public records and shall be made available for inspection during reasonable hours to any person requesting the same.

HISTORY: Laws, 1974, ch. 513, § 6, eff from and after passage (approved April 4, 1974); Laws, 2019, ch. 443, § 6, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the exception at the beginning.
Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

§ 31-7-113. State department of audit to design and prescribe forms and systems.

The State Department of Audit, under the authority of Section 7-7-211, shall design and prescribe the form of the inventory to be made, the form of the purchase requisition, the form of the purchase order, the form of the receiving report; prescribe systems of filing and prescribe the system of records necessary for the maintenance of a central purchase system, receiving system and an inventory control system; and shall promulgate and prescribe such other documentation, procedures and regulations necessary for the efficient maintenance of such systems.

HISTORY: Laws, 1974, ch. 513, § 7; Laws, 1988 Ex Sess, ch. 14, § 26, eff from and after January 2, 1989.

Cross References — Powers and duties of Department of Audit, see § 7-7-211.

Penalties for violating the provisions of this chapter, see § 31-7-55.

Requirement that a county central purchase system comply with the requirements of the State Department of Audit, see § 31-7-103.

Inventory control relating to public purchases, see § 31-7-107.

Requirement that county receiving clerks acknowledge receipt of goods and services in compliance with receipting system prescribed by State Department of Audit, see § 31-7-109.

§ 31-7-115. Audit reports.

The State Auditor, or a certified public accountant employed by the State Auditor, shall, upon the close of the fiscal year of the county, make an audit of the books, records, supporting documents and other data of the county purchase clerk and the inventory control clerk. The Auditor shall review the county's compliance with Section 31-7-13(d), (k) and (m). The audit report shall include a schedule of purchases not made from the lowest bidder under the authority of Section 31-7-13(d), with the reasons given therefor. The audit report shall include a schedule of emergency purchases made under the authority of Section 31-7-13(k). The audit report shall include a schedule of purchases made noncompetitively from a sole source under the authority of Section 31-7-13(m). Such audit report shall be published in at least one (1) newspaper published in the county, or if no newspaper is published in the county, then in a newspaper having general circulation in the county.

HISTORY: Laws, 1974, ch. 513, § 8; Laws, 1986, ch. 489, § 15; Laws, 1994, ch. 594, § 1, eff from and after July 1, 1994.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

§ 31-7-117. Repealed.

Repealed by Laws, 1988 Ex Sess, ch. 14, § 61, eff from and after January 2, 1989.

§ 31-7-117. [En Laws, 1974, ch. 513, § 9]

Editor's Notes — Former § 31-7-117 provided for penalties for a county that failed to establish and maintain a central purchase system. For a similar provision, see § 19-2-11.

§ 31-7-118. County employees permitted to also serve as purchase clerk, receiving clerk or inventory clerk.

(1) Nothing in Sections 31-7-101 through 31-7-127 shall be construed to prohibit the board of supervisors from designating any county employees, in addition to other responsibilities, to also serve as purchase clerk, receiving clerk or inventory control clerk; however, except as otherwise authorized in Section 19-4-1 and subsection (2) of this section, any employee designated to serve as one of the foregoing shall not at the same time be designated to serve as any of the other.

(2) In any county having a population of less than three thousand (3,000) according to the latest federal decennial census, the board of supervisors may, in its discretion, designate the same person to serve as purchase clerk, receiving clerk and inventory control clerk, or any combination of such positions.

HISTORY: Laws, 1988 Ex Sess, ch. 14, § 27, eff from and after January 2, 1989.

Cross References — Appointment of purchase clerk, see § 31-7-101.

General responsibilities of purchase clerk, see § 31-7-103.

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory prohibition to a E-911 Commissioner being appointed as a receiving clerk under Mississippi's Public Purchasing Laws. Briffith, October 23, 1998, A.G. Op. #98-0650.

§ 31-7-119. Board of supervisors not to purchase, order or receive products for county; exceptions.

(1) Except as provided in subsection (2) of this section, neither the board

of supervisors nor any member thereof shall individually purchase, order or receive any equipment, heavy equipment, machinery, supplies, commodities, materials or services for the use or benefit of the county.

(2) In any county in which the board of supervisors is not required to operate on a countywide system of road administration, the prohibition as provided in subsection (1) of this section shall not apply (a) to purchases of not more than Two Thousand Dollars ($2,000.00) in the aggregate; or (b) to the purchase of parts or repair services in emergency situations, which purchases are exempt from bid requirements pursuant to Section 31-7-13(m)(ii) and (iii). Any supervisor who purchases any item or services in accordance with this subsection (2) shall sign the invoice or receipt and forward it to the purchase clerk in the manner provided by Section 31-7-103. No claim based on any such purchase shall be approved unless the purchase was made in compliance with the provisions of this subsection.

HISTORY: Laws, 1974, ch. 513, § 10; Laws, 1988 Ex Sess, ch. 14, § 28; Laws, 1994, ch. 476, § 2; Laws, 2008, ch. 340, § 2; Laws, 2012, ch. 420, § 2; Laws, 2017, ch. 429, § 2, eff from and after July 1, 2017; Laws, 2020, ch. 349, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (2), substituted "Two Thousand Dollars ($2,000.00)" for "One Thousand Five Hundred Dollars ($1,500.00)," and deleted "Mississippi Code of 1972" following "Section 31-7-13(m)(ii) and (iii)."

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

OPINIONS OF THE ATTORNEY GENERAL

A claim for services or equipment cannot be amended by the board of supervisors and made legal by the issuance of a purchase order, requisition, and receiving report after the actual transaction has occurred. Gregory, June 3, 1992, A.G. Op. #92-0386.

A county board of supervisors could not legally pay the claim of a paving company for work performed where there was no purchase order number given because of the lack of compliance with the central purchasing statutes. Farese, Nov. 12, 1999, A.G. Op. #99-0618.

§§ 31-7-121 and 31-7-123. Repealed.

Repealed by Laws, 1988, Ex Sess, ch. 14, § 61, eff from and after January 2, 1989.

§ 31-7-121. [En Laws, 1974, ch. 513, § 11]

§ 31-7-123. [En Laws, 1974, ch. 513, § 12; Laws, 1986, ch. 458, § 35]

Editor's Notes — Former § 31-7-121 provided that the clerk of the chancery court would be liable for payment of claims unlawfully filed.

Former § 31-7-123 provided for bonding requirements for the purchase clerk. Bonding requirements can now be found in § 31-7-124.

§ 31-7-124. Bond of purchase clerk, receiving clerk and inventory control clerk.

The purchase clerk, receiving clerk and inventory control clerk shall give bond in a penalty equal to Seventy-five Thousand Dollars ($75,000.00) with sufficient surety, to be payable, conditioned and approved as provided by law. All assistant purchasing, receiving and inventory control clerks shall be bonded in a penalty not less than Fifty Thousand Dollars ($50,000.00). Such bond shall be in addition to any other bond required by law, with sufficient surety, to be payable, conditioned and approved as provided by law. The premiums of such bonds shall be paid from any funds available to the board of supervisors for the payment of such premiums.

HISTORY: Laws, 1988 Ex Sess, ch. 14, § 29; Laws, 2009, ch. 467, § 13, eff from and after July 1, 2009.

§ 31-7-125. Repealed.

Repealed by Laws, 1988 Ex Sess, ch. 14, § 61, eff from and after January 2, 1989.

§ 31-7-125. [En Laws, 1974, ch. 513, § 13; Laws, 1986, ch. 458, § 36]

Editor's Notes — Former § 31-7-125 provided the bonding requirements for the inventory control clerk. Bonding requirements can now be found in § 31-7-124.

§ 31-7-127. Enforcement.

In order to ensure the proper enforcement of Sections 31-7-101 through 31-7-127, as well as to ensure the enforcement of all other laws pertaining to county government or the board of supervisors, the district attorney, in addition to any other powers he already has, shall have the power to investigate the personnel, records or supervisors of any county in his district and shall have the power to bring criminal or civil actions to recover funds illegally spent, to recover damages, or to seek injunctive relief to prevent unlawful acts or compel lawful ones by supervisors or other personnel of county government. In the event of a refusal or failure of the district attorney to act, the Attorney General in a proper case may exercise the above powers of the district attorney, notwithstanding the absence of a request for investigation or action by the district attorney.

HISTORY: Laws, 1974, ch. 513, § 14; Laws, 1988 Ex Sess, ch. 14, § 30, eff from and after January 2, 1989.

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

§ 31-7-129. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983.

§ 31-7-129. [En Laws, 1974, ch. 513, § 15]

Editor's Notes — Former § 31-7-129 prohibited the county purchasing clerk from having a beneficial interest in any county contract or purchase.

BUREAU OF COMMUNICATIONS [REPEALED]

Sec.
31-7-201 through 31-7-225. Repealed.

§§ 31-7-201 through 31-7-225. Repealed.

Repealed by Laws, 1995, ch. 622, § 23, eff from and after July 1, 1995.

§ 31-7-201. [Laws, 1983, ch. 516, § 1; Laws, 1984, ch. 488, § 289]

§ 31-7-203. [Laws, 1983, ch. 516, § 2; Laws, 1984, ch. 374, § 1; Laws, 1984, ch. 488, § 290; Laws, 1985, ch. 525, § 21; Laws, 1994 Ex Sess, ch. 26, § 23]

§ 31-7-205. [Laws, 1983, ch. 516, § 3; Laws, 1984, ch. 488, § 291]

§ 31-7-207. [Laws, 1983, ch. 516, § 4; Laws, 1984, ch. 488, § 292; Laws, 1985, ch. 525, § 22]

§ 31-7-209. [Laws, 1983, ch. 516, § 5; Laws, 1984, ch. 488, § 293; Laws, 1985, ch. 525, § 23]

§ 31-7-211. [Laws, 1983, ch. 516, § 13; Laws, 1984, ch. 488, § 294; Laws, 1985, ch. 525, § 24]

§ 31-7-213. [Laws, 1983, ch. 516, § 6; Laws, 1984, ch. 488, § 295; Laws, 1985, ch. 525, § 25]

§ 31-7-215. [Laws, 1983, ch. 516, § 7; Laws, 1984, ch. 488, § 296; Laws, 1985, ch. 525, § 26]

§ 31-7-217. [Laws, 1983, ch. 516, § 8; Laws, 1984, ch. 488, § 297; Laws, 1985, ch. 525, § 27]

§ 31-7-219. [Laws, 1983, ch. 516, § 9; Laws, 1984, ch. 488, § 298; Laws, 1985, ch. 525, § 28]

§ 31-7-221. [Laws, 1983, ch. 516, § 10; Laws, 1984, ch. 374, § 2; Laws, 1984, ch. 488, § 299; Laws, 1985, ch. 525, § 29]

§ 31-7-223. [Laws, 1983, ch. 516, § 11; Laws, 1984, ch. 488, § 300; Laws, 1985, ch. 525, § 30; Laws, 1986, ch. 329]

§ 31-7-225. [Laws, 1983, ch. 516, § 12; Laws, 1984, ch. 488, § 301; Laws, 1985, ch. 525, § 31]

Editor's Notes — Former § 31-7-201 was entitled: Bureau of communications. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-203 was entitled: Definitions. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-205 was entitled: Administration by purchase division, commission of budget and accounting; purpose. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-207 was entitled: Rules and regulations; employment of personnel. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-209 was entitled: Duties and powers of office of telecommunications. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-211 was entitled: Additional duties. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-213 was entitled: Cooperation from state agencies. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-215 was entitled: Purchase or lease of telecommunications system. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-217 was entitled: Transactions dealing with telecommunications system conducted through office of telecommunications. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-219 was entitled: Applicability to specific telecommunications equipment, systems and services. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-221 was entitled: Types of contracts permitted in procurement of telecommunications equipment, systems and services. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-223 was entitled: Method of procurement. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

Former § 31-7-225 was entitled: General provisions applicable to all procurements. For current provisions relating to acquisition, operation and maintenance of telecommunications systems, see §§ 25-53-101 et seq.

TIMELY PAYMENT FOR PURCHASES BY PUBLIC BODIES

Sec.
31-7-301. Legislative findings; meaning of term "public bodies."
31-7-303. Time for filing requisition for payment of invoice; time for mailing warrant in payment of invoice.
31-7-305. Recordkeeping and notice requirements; time for mailing check in payment of invoice; time for payment in event of dispute; interest penalties.
31-7-307. Disclosure of late payments and interest penalties; preferential payment of certain invoices to obtain discount.
31-7-309. Recovery of attorney's fees in action to collect interest penalty.
31-7-311. Annual summary of payment record.
31-7-313. Adoption and promulgation of rules and regulations.
31-7-315. Relation to provisions governing payments under public works contracts.
31-7-317. Feasibility studies.

§ 31-7-301. Legislative findings; meaning of term "public bodies"

(1) The Legislature hereby declares that it is essential to the efficient operation of public bodies of this state that adequate supplies of goods and

services continue to be available from private sources; that the good name and credit of the state may be promoted by timely and responsible payment of just claims; and that fair compensation be awarded suppliers when payments of their claims are delayed without justification.

(2) The term "public bodies" shall mean all state agencies, political subdivisions, school districts, municipalities and public corporations, whether created by charter, statute or executive order, whether supported wholly or in part by public funds, or which expend public funds.

HISTORY: Laws, 1986, ch. 489, § 1, eff from and after October 1, 1986.

Joint Legislative Committee.-- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the second sentence of (3) by substituting "this subsection (3)" for "this paragraph." The Joint Committee ratified the correction at its October 19, 2020, meeting.

Cross References — Provision that the processing of claims by boards of supervisors of counties is subject to the provisions of this section, see § 19-13-31.

Provision that the processing of claims by governing authorities of municipalities is subject to the provisions of this section, see § 21-39-9.

Provision that this section does not affect payments under public works contracts pursuant to §§ 31-5-25 and 31-5-27, see § 31-7-315.

Penalties for violating the provisions of this chapter, see § 31-7-55.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 31-7-301 states that purpose of statutes providing for timely payment for purchases by public bodies is to ensure that adequate supplies of goods and services are available to state and to promote timely and responsible payment of just claims. Collins, Feb. 18, 1993, A.G. Op. #93-0015.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Works and Contracts §§ 8-29.

CJS.

72 C.J.S. Supp, Public Contracts §§ 1-24, 41.

§ 31-7-303. Time for filing requisition for payment of invoice; time for mailing warrant in payment of invoice.

(1) The requisition for payment of an invoice submitted to a public body and required by law to be filed with the State Fiscal Management Board shall be filed with the State Fiscal Management Board not later than thirty (30) days after receipt of the invoice and receipt, inspection and approval of the goods or services, except that in the case of a bona fide dispute the requisition for payment shall contain a statement of the dispute and authorize payment only in the amount not disputed. If a requisition for payment filed within the thirty-day period is returned by the State Fiscal Management Board because of an error, it shall nevertheless be deemed timely filed. The thirty-day filing requirement may be waived by the State Fiscal Management Board on a

showing of exceptional circumstances in accordance with rules and regulations established by the State Fiscal Management Board.

(2) The warrant, in payment of an invoice submitted to a public body of the state, shall be mailed or otherwise delivered by the public body not later than fifteen (15) days after filing of the requisition for payment; however, this requirement may be waived by the State Fiscal Management Board on a showing of exceptional circumstances in accordance with rules and regulations of the State Fiscal Management Board or as otherwise provided in Section 7-7-35, Mississippi Code of 1972.

HISTORY: Laws, 1986, ch. 489, § 2, eff from and after October 1, 1986.

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References — Provision that this section does not affect payments under public works contracts pursuant to §§ 31-5-25 and 31-5-27, see § 31-7-315.

Penalties for violating the provisions of this chapter, see § 31-7-55.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Works and Contracts §§ 8-29.

CJS.

72 C.J.S. Supp, Public Contracts §§ 1-24, 41.

§ 31-7-305. Recordkeeping and notice requirements; time for mailing check in payment of invoice; time for payment in event of dispute; interest penalties.

(1) All public bodies of the state, including those which issue checks and those which file requisitions for payment with the State Fiscal Management Board, shall keep a record of the date of receipt of the invoice, dates of receipt, inspection and approval of the goods or services, date of issuing the check or date of filing the requisition for payment, as the case may be, and date of mailing or otherwise delivering the warrant or check in payment thereof. In the event that the State Fiscal Management Board mails or otherwise delivers the warrant directly to the claimant, pursuant to Section 7-7-35, Mississippi Code of 1972, the State Fiscal Management Board shall notify the public body of the date thereof. The provisions of this section are supplemental to the requirements of Sections 19-13-29, 21-39-7, 21-39-13 and 37-5-93, Mississippi Code of 1972.

(2) All public bodies that are authorized to issue checks in payment of goods and services and are not required to issue requisitions for payment to the State Fiscal Management Board shall mail or otherwise deliver such checks no later than forty-five (45) days after receipt of the invoice and receipt, inspection and approval of the goods or services; however, in the event of a bona fide dispute, the public body shall pay only the amount not disputed.

(3) If a warrant or check, as the case may be, in payment of an invoice is not mailed or otherwise delivered within forty-five (45) days after receipt of the invoice and receipt, inspection and approval of the goods and services, the

public body shall be liable to the vendor, in addition to the amount of the invoice, for interest at a rate of one and one-half percent (1-½ %) per month or portion thereof on the unpaid balance from the expiration of such forty-five-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor. The provisions of this subsection (3) shall apply only to undisputed amounts for which payment has been authorized. In the case of an error on the part of the vendor, the forty-five-day period shall begin to run upon receipt of a corrected invoice by the public body and upon compliance with the other provisions of this section. The various public bodies shall be responsible for initiating the penalty payments required by this subsection and shall use this subsection as authority to make such payments. Also, at the time of initiating such penalty payment, the public body shall specify in writing an explanation of the delay and shall attach such explanation to the requisition for payment of the penalty or to the file copy of the check issued by the public body, as the case may be.

(4)(a) In the event of a bona fide dispute as to an invoice, or any portion thereof, the dispute shall be settled within thirty (30) days after interest penalties could begin to be assessed, if it were not for the dispute.

(b) If a warrant or check, as the case may be, in payment of an invoice, subject to a prior dispute, is not mailed or otherwise delivered within thirty (30) days after settlement of the dispute, the public body shall be liable to the vendor, in addition to the amount of the invoice, for interest at a rate of one and one-half percent (1-½ %) per month or portion thereof on the unpaid balance from the expiration of said thirty-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor. At the time of initiating such penalty payment, the public body shall specify in writing an explanation of the delay and shall attach such explanation to the requisition for payment of the penalty or to the file copy of the check issued by the public body, as the case may be. The interest penalty prescribed in this paragraph shall be in lieu of the penalty provided in subsection (3).

HISTORY: Laws, 1986, ch. 489, § 3, eff from and after October 1, 1986.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the second sentence of (3) by substituting "this subsection (3)" for "this paragraph." The Joint Committee ratified the correction at its October 19, 2020, meeting.

Editor's Notes — Former § 37-5-93, referred to in (1), authorized a county superintendent of education to serve as a special fiscal officer and was repealed by Laws of 1986, ch. 492, § 84, effective from and after July 1, 1987.

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References — Provision that the processing of claims by boards of supervisors of counties is subject to the provisions of this section, see § 19-13-31.

Provision that the processing of claims by governing authorities of municipalities is subject to the provisions of this section, see § 21-39-9.

Penalties for violating the provisions of this chapter, see § 31-7-55.

Provision that this section does not affect payments under public works contracts pursuant to §§ 31-5-25 and 31-5-27, see § 31-7-315.

JUDICIAL DECISIONS

1. In general.

Denial of a vendor's claim against a state agency for prejudgment interest and attorneys' fees was appropriate because the trial court determined that the state agency's actions lacked bad faith. Mann Agency, LLC v. Miss. Dep't of Pub. Safety, — So. 3d —, 2020 Miss. LEXIS 342 (Miss. Sept. 24, 2020).

Corporation, which had contracted with a county to reseal a road, was not entitled to prejudgment interest under Miss. Code. Ann. § 31-7-305 because there was no bad faith or sinister motive behind the contract dispute. Southland Enters., Inc. v. Newton County, 940 So. 2d 937, 2006 Miss. App. LEXIS 101 (Miss. Ct. App.), cert. denied, 939 So. 2d 805, 2006 Miss. LEXIS 739 (Miss. 2006).

Because a contractor was awarded an amount in quantum meruit, the county was not liable for statutory interest or attorney's fees. Southland Enters. v. Newton County, 838 So. 2d 286, 2003 Miss. LEXIS 68 (Miss. 2003).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 31-7-305 provides for interest on late payments for goods or services purchased by a municipality. Collins, Feb. 18, 1993, A.G. Op. #93-0015.

Only board of supervisors can pass on claim of vendor and order it paid; if claim is denied and later determined to have been properly allowable by court of competent jurisdiction, then any interest determined to be owing should be paid by board of supervisors. Compton, March 23, 1994, A.G. Op. #94-0135.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Works and Contracts §§ 8-29.

CJS.

72 C.J.S. Supp, Public Contracts §§ 1-24, 41.

§ 31-7-307. Disclosure of late payments and interest penalties; preferential payment of certain invoices to obtain discount.

(1) The budget request submitted by a public body to the Legislature shall specifically disclose the amount of any interest paid by any public body pursuant to Sections 31-7-301 through 31-7-317. However, no provision of Sections 31-7-301 through 31-7-317 authorizes a new appropriation to cover such interest penalties, and public bodies shall not seek to increase appropriations for the purpose of obtaining funds to pay any interest penalties.

(2) All public bodies of the state, including those which issue checks and those which file requisitions for payment with the State Fiscal Management Board, shall monthly notify the State Fiscal Management Board of the number and dollar amount of late payments by the public body along with the amounts of interest paid and the specific steps being taken to reduce the incidence of late payments.

(3) If the terms of the invoice provide a discount for payment in less than forty-five (45) days, public bodies shall preferentially process it and use all diligence to obtain the savings by compliance with the invoice terms, if it would be cost effective.

HISTORY: Laws, 1986, ch. 489, § 4, eff from and after October 1, 1986.

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References — Provision that this section does not affect payments under public works contracts pursuant to §§ 31-5-25 and 31-5-27, see § 31-7-315.

Penalties for violating the provisions of this chapter, see § 31-7-55.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Works and Contracts §§ 8-29.

CJS.

72 C.J.S. Supp, Public Contracts §§ 1-24, 41.

§ 31-7-309. Recovery of attorney's fees in action to collect interest penalty.

Whenever a vendor brings formal administrative or judicial action to collect interest due under Sections 31-7-301 through 31-7-317, the public body shall be required to pay any reasonable attorney's fees if the vendor prevails.

HISTORY: Laws, 1986, ch. 489, § 5, eff from and after October 1, 1986.

Cross References — Provision that the processing of claims by boards of supervisors of counties is subject to the provisions of this section, see § 19-13-31.

Provision that the processing of claims by governing authorities of municipalities is subject to the provisions of this section, see § 21-39-9.

Provision that this section does not affect payments under public works contracts pursuant to §§ 31-5-25 and 31-5-27, see § 31-7-315.

Penalties for violating the provisions of this chapter, see § 31-7-55.

JUDICIAL DECISIONS

1. In general.

Denial of a vendor's claim against a state agency for prejudgment interest and attorneys' fees was appropriate because the trial court determined that the state agency's actions lacked bad faith. Mann Agency, LLC v. Miss. Dep't of Pub. Safety, — So. 3d —, 2020 Miss. LEXIS 342 (Miss. Sept. 24, 2020).

Corporation that had contracted with a county to reseal a road was not entitled to attorney fees under Miss. Code Ann. § 31-7-309 because the corporation was not entitled to an award under Miss. Code Ann. § 31-7-305, and Miss. Code Ann. § 31-5-25 did not provide for a statutory award of attorney fees. Southland Enters., Inc. v. Newton County, 940 So. 2d 937, 2006 Miss. App. LEXIS 101 (Miss. Ct. App.), cert. denied, 939 So. 2d 805, 2006 Miss. LEXIS 739 (Miss. 2006).

Based upon the delay in payment to the construction company by the county for a completed project, the trial court properly awarded the company interest, costs, and attorney's fees as prescribed by Miss. Code Ann. §§ 31-5-25 and 31-7-309; such an award was supported by the record on appeal as the record contained a contract which provided for interest in the event of late payment, clearly detailed the schedule for progress payments, and clearly prescribed the manner in which final payment was to take place; the county's deposit with the court clearly showed that the funds were present to pay the remaining portion of the contract, but for reasons unknown, the county chose not to honor the final payment provision of the contract until a lawsuit had been filed to determine each party's rights. Humphreys County v. Guy Jones, Jr. Constr. Co., 910 So. 2d

1129, 2005 Miss. App. LEXIS 202 (Miss. Ct. App. 2005).

Because a contractor was awarded an amount in quantum meruit, the county was not liable for statutory interest or attorney's fees. Southland Enters. v. Newton County, 838 So. 2d 286, 2003 Miss. LEXIS 68 (Miss. 2003).

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Works and Contracts §§ 8-29.

CJS.
72 C.J.S. Supp, Public Contracts §§ 1-24, 41.

§ 31-7-311. Annual summary of payment record.

The State Fiscal Management Board shall submit to the Appropriations Committee of each house of the Legislature by January 15 of each year a report summarizing the payment record for the preceding fiscal year. The report shall include the number and dollar amount of late payments by each public body along with the amounts of interest paid and the specific steps being taken to reduce the incidence of late payments.

HISTORY: Laws, 1986, ch. 489, § 6, eff from and after October 1, 1986.

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References — Provision that the processing of claims by boards of supervisors of counties is subject to the provisions of this section, see § 19-13-31.

Provision that the processing of claims by governing authorities of municipalities is subject to the provisions of this section, see § 21-39-9.

Provision that this section does not affect payments under public works contracts pursuant to §§ 31-5-25 and 31-5-27, see § 31-7-315.

Penalties for violating the provisions of this chapter, see § 31-7-55.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Works and Contracts §§ 8-29.

CJS.
72 C.J.S. Supp, Public Contracts §§ 1-24, 41.

§ 31-7-313. Adoption and promulgation of rules and regulations.

The State Fiscal Management Board is authorized and directed to adopt and promulgate rules and regulations necessary to implement this section.

HISTORY: Laws, 1986, ch. 489, § 7, eff from and after October 1, 1986.

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References — Provision that the processing of claims by boards of supervisors of counties is subject to the provisions of this section, see § 19-13-31.

Provision that the processing of claims by governing authorities of municipalities is subject to the provisions of this section, see § 21-39-9.

Provision that this section does not affect payments under public works contracts pursuant to §§ 31-5-25 and 31-5-27, see § 31-7-315.

Penalties for violating the provisions of this chapter, see § 31-7-55.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Works and Contracts §§ 8-29.

CJS.
72 C.J.S. Supp, Public Contracts §§ 1-24, 41.

§ 31-7-315. Relation to provisions governing payments under public works contracts.

Sections 31-7-301 through 31-7-317 shall not affect payment under public works contracts as provided in Sections 31-5-25 and 31-5-27, Mississippi Code of 1972.

HISTORY: Laws, 1986, ch. 489, § 8, eff from and after October 1, 1986.

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Works and Contracts §§ 8-29.

CJS.
72 C.J.S. Supp, Public Contracts §§ 1-24, 41.

§ 31-7-317. Feasibility studies.

(1) The Governor's Office of General Services shall study the feasibility of:

(a) Requiring the Bureau of Purchasing to act as purchasing agent for state agencies;

(b) Requiring the Bureau of Purchasing to purchase frequently used products and supplies and warehouse them for state agencies, especially in the Jackson metropolitan area; and

(c) A small business/minority set-aside program.

(2) On or before January 15, 1987, the Governor's Office of General Services shall transmit its written report of the feasibility studies to the Legislature, along with its recommendations and an estimate of the fiscal impact of the recommendations. If the Governor's Office of General Services recommends that the bureau should be required to act as purchasing agent for smaller state agencies, the report shall include a list of state agencies to be included.

HISTORY: Laws, 1986, ch. 489, § , eff from and after passage (approved April 15, 1986).

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Penalties for violating the provisions of this chapter, see § 31-7-55.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Works and Contracts §§ 8-29.

CJS.
72 C.J.S. Supp, Public Contracts §§ 1-24, 41.

BEST PRACTICES FOR SOLICITING REQUESTS FOR PROPOSALS OR REQUESTS FOR QUALIFICATIONS

Sec.
31-7-401. Applicability.
31-7-403. Conditions for use.
31-7-405. Content of the request for proposals or request for qualifications.
31-7-407. Public notice.
31-7-409. Pre-proposal conferences.
31-7-411. Drafting the request for proposals or request for qualifications.
31-7-413. Evaluation factors in the request for proposals or request for qualifications.
31-7-415. Evaluation committee.
31-7-417. Receipt and registration of proposals or qualifications.
31-7-419. Evaluating submitted proposals or qualifications.
31-7-421. Best and final offers.
31-7-423. Awarding the contract.

§ 31-7-401. Applicability.

Except as otherwise provided by law, the provisions of Sections 31-7-401 through 31-7-423 shall apply to every procurement of commodities, supplies, equipment, construction, technology, personal and professional services other than those in Section 27-104-7(2)(f) and (8), state agency employee benefits, supplemental insurance and cafeteria plans, that are solicited by any state agency by a request for proposals or request for qualifications. The following provisions are intended to ensure that the best practices for soliciting requests for proposals or requests for qualifications are implemented. Any agency that is required to receive approval by the Public Procurement Review Board before entering into a personal or professional services contract as provided in subsection (2)(g) of Section 27-104-7 shall implement the best practices specified in Sections 31-7-401 through 31-7-423. The Public Procurement Review Board shall promulgate any necessary rules and regulations to administer the provisions of Sections 31-7-401 through 31-7-423.

HISTORY: Laws, 2017, ch. 400, § 1, eff from and after Jan. 1, 2018.

§ 31-7-403. Conditions for use.

(1) Competitive sealed bidding is the preferred method of procurement; however, if it is not practicable and advantageous, a request for proposals or request for qualifications may be used. The terms “practicable” and “advantageous” are to be given ordinary dictionary meanings. The term “practicable” denotes what may be accomplished or put into practical application. “Advan-

tageous" denotes a judgmental assessment of what is in the state's best interest.

(2) The following factors shall be considered when determining advantageousness:

(a) The need for flexibility;

(b) The type of evaluations that will be needed after offers are received;

(c) Whether the evaluation factors involve the relative abilities of offerers to perform, including degrees of technical or professional experience or expertise;

(d) Whether the type of need to be satisfied involves weighing artistic and aesthetic values to the extent that price is a secondary consideration;

(e) Whether the types of supplies, services or construction may require the use of comparative judgmental evaluations to evaluate them adequately; and

(f) Whether prior procurements indicate that a request for proposals may result in more beneficial contracts for the state.

(3) The following factors shall be considered when determining practicability:

(a) Whether the contract needs to be a contract other than a fixed-price type contract;

(b) Whether oral or written discussions may need to be conducted with offerers concerning technical and price aspects of their proposals;

(c) Whether offerers may need to be afforded the opportunity to revise their proposals, including price;

(d) Whether the award may need to be based upon a comparative evaluation of differing price and contractual factors as well as quality factors that include technical and performance capability and the content of the technical proposal; and

(e) Whether the primary consideration in determining award may not be price.

(4) On or before January 1 of each year, and every time a chief procurement officer is hired, each state agency shall provide to the state purchasing agent the name of the state agency's chief procurement officer and information identifying the state agency's central purchasing office, if applicable. If the chief procurement officer of an agency or his or her designee determines, in writing, that the use of competitive sealed bidding is either not practicable or not advantageous to the state, he or she shall submit a detailed explanation of the reasons for that determination to the Public Procurement Review Board. If the Public Procurement Review Board determines that competitive sealed bidding is either not practicable or not advantageous to the state, then a contract may be entered into for the procurement of commodities, supplies, equipment, construction, technology, personal and professional services, state agency purchased employee benefits or state agency supplemental insurance and cafeteria plans, by a request for proposals or request for qualifications. However, these procurements contracted for through a request for proposals or request for qualifications may not be combined or included in a contract with

other procurements that are required to be procured through competitive sealed bidding so as to avoid the statutory obligation for procurement through competitive sealed bidding. The board may modify or revoke its determination at any time, and the determination should be reviewed for current applicability from time to time.

In addition to determining whether a request for proposals or request for qualifications would be practicable and advantageous to the state, when making the decision to use a request for proposals or request for qualifications, the chief procurement officer shall consider the following factors:

(a) Whether quality, availability or capability is overriding in relation to price in procurements for research and development, technical supplies or services;

(b) Whether the initial installation needs to be evaluated together with later maintenance and service capabilities and what priority should be given to these requirements in the best interests of the state; and

(c) Whether the marketplace will respond better to a solicitation permitting not only a range of alternative proposals but evaluation and discussion of them before making the award.

HISTORY: Laws, 2017, ch. 400, § 2, eff from and after Jan. 1, 2018.

§ 31-7-405. Content of the request for proposals or request for qualifications.

(1) The request for proposals or request for qualifications shall include the following:

(a) Instructions and information to offerers concerning the request for proposals or request for qualifications submission requirements, including the time and date set for receipt of proposals or qualifications, the address of the office to which proposals or qualifications are to be delivered, the maximum time for proposal or qualification acceptance by the state, the manner in which proposals or qualifications are to be submitted, including any forms for that purpose and any other special information;

(b) The purchase description, evaluation factors, delivery or performance schedule and any inspection and acceptance requirements that are not included in the purchase description;

(c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable;

(d) A statement that discussions may be conducted with offerers who submit proposals or qualifications determined to be reasonably susceptible of being selected for the award, but that proposals or qualifications may be accepted without such discussions; and

(e) A statement of when and how price should be submitted.

(2) The request for proposals or request for qualifications may incorporate documents by reference provided that the request for proposals or request for qualifications specifies where those documents can be obtained.

(3) Proposal or qualification preparation time shall be set to provide offerers a reasonable time to prepare their proposals or qualifications. A

minimum of thirty (30) days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the chief procurement officer of the requesting agency.

HISTORY: Laws, 2017, ch. 400, § 3, eff from and after Jan. 1, 2018.

§ 31-7-407. Public notice.

(1) In addition to any method of public notice regarding the solicitation of requests for proposals or requests for qualifications currently being used by state agencies, the chief procurement officer shall also have posted on the Mississippi procurement portal and on the soliciting agency's website, public notification of a pending procurement through request for proposals or request for qualifications. The notice shall include the following:

(a) The due date for responses;

(b) The name and phone number of the officer conducting the procurement; and

(c) The means of obtaining the solicitation.

(2) The notice shall be posted at least thirty (30) days before the date that proposals or qualifications are to be submitted to the chief procurement officer, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the chief procurement officer of the requesting agency.

(3) Each chief procurement officer may determine that other methods of public notification are best for that particular agency or that particular request for proposals or request for qualifications. If such a determination is made, the chief procurement officer may provide notice in an alternative manner about the request for proposals or request for qualifications in addition to the methods provided for in Sections 31-7-401 through 31-7-423.

(4) The Department of Finance and Administration (DFA) shall monitor agency websites and the Mississippi procurement portal to ensure that the agencies are posting the required notice. DFA shall audit agencies and report its findings to the Chairs of the House of Representatives and Senate Accountability, Efficiency and Transparency Committees and House of Representatives and Senate Appropriations Committees by December 31 of each year.

HISTORY: Laws, 2017, ch. 400, § 4, eff from and after Jan. 1, 2018.

§ 31-7-409. Pre-proposal conferences.

(1) Pre-proposal conferences may be conducted to explain the procurement requirements. If a chief procurement officer plans to hold such a conference, he or she shall prominently place the notification in the request for proposals or request for qualifications solicitation. The notification shall include the date, time and location of the conference. If the chief procurement officer decides to hold a pre-proposal conference after the request for proposals

or request for qualifications has been sent out, then he or she shall notify all prospective offerers known to have received a request for proposals or request for qualifications.

(2) If a pre-proposal conference is held, it shall be at least fourteen (14) days after the request for proposals or request for qualifications has been issued. In setting the time for the conference, the chief procurement officer shall consider the complexity of the procurement and the potential modifications that may need to be made after the conference and any amendments to the solicitation that the chief procurement officer may need to make after the conference.

(3) The chief procurement officer issuing the request for proposals or request for qualifications shall serve as chair of the conference. Offerers attending the conference shall be required to sign an attendance sheet provided by the soliciting agency. The chair shall announce at the beginning of the conference how the conference is to be handled. The conference shall be recorded. A chief procurement officer may mandate attendance at a conference if he or she feels it is critical to understanding the solicitation. Once the conference is over, the chief procurement officer shall put the recordings from the conference and the questions and answers from the conference in writing and send them to the offerers who received the request for proposals or request for qualifications and post them on the Mississippi procurement portal and the soliciting agency's website.

HISTORY: Laws, 2017, ch. 400, § 5, eff from and after Jan. 1, 2018.

§ 31-7-411. Drafting the request for proposals or request for qualifications.

(1) In addition to the items listed in Sections 31-7-401 through 31-7-423, the contents of a request for proposals or request for qualifications shall also include the following:

(a) A statement that discussions may be conducted with offerers who submit proposals or qualifications determined to be reasonably susceptible of being selected for the award, but that proposals or qualifications may also be accepted without those discussions; and

(b) A statement of when and how price should be submitted.

(2) The request for proposals or request for qualifications shall indicate, either by the order listed, weights or some other manner, the order of importance of the evaluation criteria.

(3) The request for proposals or request for qualifications, its amendments, the offerer's proposals or qualifications and the best and final offer shall constitute the contract.

HISTORY: Laws, 2017, ch. 400, § 6, eff from and after Jan. 1, 2018.

§ 31-7-413. Evaluation factors in the request for proposals or request for qualifications.

(1) When the chief procurement officer submits the determination that

the use of competitive sealed bidding is either not practicable or not advantageous to the state to the Public Procurement Review Board for its approval, he or she shall include in that submission the evaluation factors that will be used in reviewing the submitted proposals or qualifications. The evaluation factors shall be approved by the Public Procurement Review Board in the same way that the decision to solicit procurements through a request for proposals or request for qualifications must be approved.

(2)(a) The request for proposals or request for qualifications shall state all of the approved evaluation factors, including price, and their relative importance. When the chief procurement officer is determining the weights and importance of each evaluation factor, price as an evaluation factor shall be given the highest criteria weighting and at least thirty-five percent (35%) out of the one hundred percent (100%) total weight of all the other evaluation factors. The evaluation shall be based on the evaluation factors set forth in the request for proposals or request for qualifications. The evaluation factors used and the weights given to each shall be decided and agreed to by the evaluation committee before the opening of any proposal or qualification. Numerical rating systems shall be used when determining the weight and importance of each evaluation factor. Factors not specified in the request for proposals or request for qualifications shall not be considered. Upon completion of the evaluation, the evaluation score sheets used to review the submitted proposals or qualifications shall be made part of the report required under Section 31-7-423(1).

(b) The following, as appropriate to individual circumstances, shall be used as criteria for evaluating requests for proposals or requests for qualifications under the request for proposals or request for qualifications process described in Sections 31-7-401 through 31-7-423. These factors are not intended to be limiting or all-inclusive, and they may be adapted or supplemented in order to meet a soliciting agency's individual needs as the competitive procurement process requires.

(i) Technical factors (Proposed methodology):

a. Does the offerer's proposal or qualification demonstrate a clear understanding of the scope of work and related objectives?

b. Is the offerer's proposal or qualification complete and responsive to the specific request for proposals or request for qualifications requirements?

c. Has the past performance of the offerer's proposed methodology been documented?

d. Does the offerer's proposal or qualification use innovative technology and techniques?

(ii) Management factors (Factors that will require the identity of the offerer to be revealed must be submitted separately from other factors):

1. Project management:

a. How well does the proposed scheduling timeline meet the needs of the soliciting agency?

b. Is there a project management plan?

2. History and experience in performing the work:

a. Does the offerer document a record of reliability of timely delivery and on-time and on-budget implementation?

b. Does the offerer demonstrate a track record of service as evidenced by on-time, on-budget, and contract compliance performance?

c. Does the offerer document industry or program experience?

d. Does the offerer have a record of poor business ethics?

3. Availability of personnel, facilities, equipment and other resources:

a. To what extent does the offerer rely on in-house resources vs. contracted resources?

b. Are the availability of in-house and contract resources documented?

4. Qualification and experience of personnel:

a. Documentation of experience in performing similar work by employees and when appropriate, sub-contractors?

b. Does the offerer demonstrate cultural sensitivity in hiring and training staff?

(iii) Cost factors (Factors must be submitted separately from other factors unless specifically approved by the Public Procurement Review Board):

1. Cost of goods to be provided or services to be performed:

a. Relative cost: How does the cost compare to other similarly scored proposals or qualifications?

b. Full explanation: Is the price and its component charges, fees, etc. adequately explained or documented?

2. Assurances of performance:

a. If required, are suitable bonds, warranties or guarantees provided?

b. Does the proposal or qualification include quality control and assurance programs?

3. Offerer's financial stability and strength: Does the offerer have sufficient financial resources to meet its obligations?

HISTORY: Laws, 2017, ch. 400, § 7, eff from and after Jan. 1, 2018.

§ 31-7-415. Evaluation committee.

(1) Evaluation committees shall be used to evaluate request for proposals or request for qualifications and award contracts. Persons appointed to an evaluation committee shall have the relevant experience necessary to evaluate the proposal or qualification. The members of the evaluation committee shall have no personal, financial or familial interest in any of the contract offerers, or principals thereof, to be evaluated.

(2) The names of the members of the evaluation committee shall not be publicly disclosed until their evaluation report as required under Section

31-7-423(1). The members' names and job titles shall be made available to the public. Where evaluation committee members are not public employees, those members' names, educational and professional qualifications, and practical experience, that were the basis for the appointment, shall be made available to the public.

(3) Before evaluating proposals or qualifications, each individual participating in the evaluation of a proposal or qualification shall execute a statement in accordance with subsection (1) of this section certifying that he or she does not have a conflict of interest. The statement shall be filed with the chief procurement officer of the soliciting agency, before beginning the evaluation process. The certification shall be as follows:

"I hereby certify that I have reviewed the conflict of interest standards prescribed herein, and that I do not have a conflict of interest with respect to the evaluation of this proposal or qualification. I further certify that I am not engaged in any negotiations or arrangements for prospective employment or association with any of the offerers submitting proposals or qualifications or their parent or subsidiary organization."

(4) Committee members may conduct their work separately or together.

(5) The committee may use advisors, as it deems necessary to give opinions on evaluating proposals or qualifications, except that such advisors shall be subject to the provisions of subsection (3) of this section. The names of the advisors shall be made public at the same time as members of the evaluation committee as provided in subsection (2) of this section. For the purposes of this section, the term "advisors" shall mean those individuals who provide such significant input to a member or members of the evaluation committee that the advisor's opinions are fundamental in shaping the committee member's evaluation of the submitted proposals or qualifications.

(6) The process of establishing weighting criteria and evaluating proposals or qualifications shall result in a finding that a specific proposal or qualification is the most practical and advantageous, price and other factors considered, or that all proposals or qualifications should be rejected.

HISTORY: Laws, 2017, ch. 400, § 8, eff from and after Jan. 1, 2018.

§ 31-7-417. Receipt and registration of proposals or qualifications.

(1) Submitted proposals or qualifications shall be opened at the time designated for opening in the request for proposals or request for qualifications. Proposals or qualifications and modifications shall be date-stamped or time and date-stamped upon receipt and held in a secure place until the established due date. Electronic proposals or qualifications received will be stored in an electronic lockbox until the time designated for the opening of the proposal or qualification.

(2) As each proposal or qualification is submitted but before those proposals or qualifications are opened, the chief procurement officer shall designate a person to prepare a register of proposals or qualifications, which

shall include the number of modifications received, if any, and a description sufficient to identify the supply, service, commodity or other item offered. The designated person shall assign each submitted proposal or qualification an identifying letter, number, or combination thereof, without revealing the name of the offerer who submitted each proposal or qualification to the chief procurement officer or any person named to the evaluation committee for that proposal or qualification. The designated person shall keep the names of the offerers and their identifying numbers or letters, or combination thereof, in a sealed envelope or other secure location until factors not requiring knowledge of the name of the offerer have been evaluated and scored. If the designated person reveals the names of the offerers and the corresponding identifying information before such time, the procurement process shall be terminated and the proposal or qualifications resolicited. The register of proposals or qualifications shall be made part of the report required under Section 31-7-423(1).

HISTORY: Laws, 2017, ch. 400, § 9; Laws, 2017, ch. 411, § 2, eff from and after Jan. 1, 2018.

§ 31-7-419. Evaluating submitted proposals or qualifications.

(1) The evaluation committee shall evaluate proposals or qualifications only in accordance with the methodology and weighting criteria described in the request for proposals or request for qualifications. Proposals or qualifications shall be initially classified as: (a) acceptable; (b) potentially acceptable, which means reasonably susceptible of being made acceptable; or (c) unacceptable. Offerers whose proposals or qualifications are unacceptable shall be so notified promptly.

(2) Discussions may be held with offerers to:

(a) Promote understanding of the state's requirements and the offerer's proposals or qualifications; and

(b) Facilitate arriving at a contract that will be the most practicable and advantageous to the state taking into consideration price and the other evaluation factors set forth in the request for proposals or request for qualifications.

(3) Offerers shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals or qualifications. Any discussions that take place under the provisions of this section shall be recorded and the recordings shall be made public upon award of the contract. The chief procurement officer shall establish procedures and schedules for conducting discussions. If, during discussions, there is a need for any substantial clarification of or change in the request for proposals or request for qualifications, the request shall be amended to incorporate the clarification or change. Auction techniques, revealing one offerer's price to another, and disclosure of any information derived from competing proposals is prohibited. Any substantial oral clarification of a proposal or qualification shall be reduced to writing by the offerer.

HISTORY: Laws, 2017, ch. 400, § 10, eff from and after Jan. 1, 2018.

§ 31-7-421. Best and final offers.

The chief procurement officer shall establish a common date and time for the submission of best and final offers. Best and final offers shall be submitted only once; however, the chief procurement officer may make a written determination that it is in the state's best interest to conduct additional discussions or change the state's requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed before the award. Offerers shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

HISTORY: Laws, 2017, ch. 400, § 11, eff from and after Jan. 1, 2018.

§ 31-7-423. Awarding the contract.

(1) After proposals or qualifications have been evaluated, the evaluation committee shall prepare a report evaluating and recommending the award of a contract or contracts. The report shall list the names of all potential offerers who submitted a proposal or qualification and shall summarize the proposals or qualifications of each offerer. The report shall rank offerers in order of evaluation, shall recommend the selection of an offerer or offerers, as appropriate, for a contract, shall be clear in the reasons why the offerer or offerers have been selected among others considered, and shall detail the terms, conditions, scope of services, fees and other matters to be incorporated into the contract. The report shall be available to the public at least forty-eight (48) hours before the awarding of the contract.

(2) The chief procurement officer shall publish a notice on the agency's website and the Mississippi procurement portal summarizing the award of the contract, which shall include but not be limited to, the nature, duration and amount of the contract, the name of the offerer and a statement that the contract is on file and available for public inspection in the office of the chief procurement officer.

HISTORY: Laws, 2017, ch. 400, § 12, eff from and after Jan. 1, 2018.

CHAPTER 8.

ACQUISITION OF PUBLIC BUILDINGS, FACILITIES, AND EQUIPMENT THROUGH RENTAL CONTRACTS

Sec.
31-8-1. Legislative purpose; construction of chapter.
31-8-3. Purposes for which counties and municipalities may lease facilities.
31-8-5. Option to purchase.
31-8-7. Lease of real property by municipality to private concern for construction or renovation of buildings or facilities; subleases to United States Postal Service or to any other state or federal agency.
31-8-9. Term of lease; pledge of full faith and credit; limitation of obligation to money appropriated.
31-8-11. Notice of intent to lease; protest; election; advertisement of lease agreement; award of lease.
31-8-13. Full and complete authority for leases.

§ 31-8-1. Legislative purpose; construction of chapter.

The purpose of this chapter is to provide a method to enable counties and municipalities to acquire public buildings, facilities and equipment through the use of rental contracts. This chapter shall be construed in conformity with such intention and shall be an alternative to those methods which may be otherwise provided by law.

HISTORY: Laws, 1990, ch. 564, § 1, eff from and after July 1, 1990.

Editor's Notes — On June 18, 1990, the United States Attorney General interposed no objection to the addition of this section by Laws of 1990, Ch. 564.

Cross References — Lease of real property to private entity for construction or renovation of facilities described in this section, see § 31-8-7.

OPINIONS OF THE ATTORNEY GENERAL

The governing authorities of a municipality may lease municipal property to a company to construct a telecommunications tower and building that will be owned by the city once completed, and the company may lease space on the tower for its own use as consideration for the lease of the municipal property pursuant to this chapter. Jordan, March 16, 1999, A.G. Op. #99-0038.

§ 31-8-3. Purposes for which counties and municipalities may lease facilities.

The counties and municipalities of this state, acting by and through the governing authorities thereof, are hereby authorized and empowered to enter into lease agreements with any corporation, partnership, limited partnership, joint venture or individual under which the county or municipality may agree to lease a facility for use by the lessor for any of the following purposes for a primary term not to exceed twenty (20) years:

(a) Public buildings;

(b) Courthouses;

(c) Office buildings;

(d) Jails;

(e) Auditoriums;

(f) Community centers;

(g) Civic art centers;

(h) Public libraries;

(i) Gymnasiums; and

(j) Machinery and equipment for use in connection with any of the above, but shall not include office furniture and/or office machines, provided that the primary term of a lease with respect to machinery and equipment shall not exceed the estimated useful economic life of such machinery and equipment, as such useful economic life is mutually agreed upon by the lessor and lessee.

Nothing in this section shall be construed to authorize the acquisition of public school buildings through the use of rental contracts.

HISTORY: Laws, 1990, ch. 564, § 2, eff from and after July 1, 1990.

Editor's Notes — On June 18, 1990, the United States Attorney General interposed no objection to the addition of this section by Laws of 1990, Ch. 564.

OPINIONS OF THE ATTORNEY GENERAL

Lease purchase agreement calling for a private corporation to lease/purchase certain real estate to a county for a term of 20 years and then convey title to the county at the end of that term and also providing that the corporation has an exclusive right to operate a community center on the property for a term of 99 years after the original agreement expires does not violate the rule that one board of supervisors cannot bind a successor board and the 20-year lease term is binding on the current board. However, the clause granting an exclusive right to operate the community center for a term of 99 years is not binding on the current board or successor boards and is voidable at the option of the board. Clayton, July 28, 2004, A.G. Op. 04-0329.

RESEARCH REFERENCES

ALR.

Power of municipal corporation to lease or sublet property owned or leased by it. 47 A.L.R.3d 19.

Am. Jur.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 540, 556-559.

§ 31-8-5. Option to purchase.

All such leases shall contain an option granting to the county or municipality the right to purchase the leased property upon the expiration of the primary term, or upon such earlier date as may be agreed upon, at a price not to exceed the unpaid principal balance at such time.

HISTORY: Laws, 1990, ch. 564, § 3, eff from and after July 1, 1990.

Editor's Notes — On June 18, 1990, the United States Attorney General interposed no objection to the addition of this section by Laws of 1990, Ch. 564.

RESEARCH REFERENCES

Am. Jur.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 540, 556-559.

§ 31-8-7. Lease of real property by municipality to private concern for construction or renovation of buildings or facilities; subleases to United States Postal Service or to any other state or federal agency.

(1) The counties and municipalities of the state are authorized to lease publicly owned real property to any corporation, partnership, limited partnership, joint venture or individual for the purpose of enabling such person to construct or renovate thereon any of the buildings or facilities described in Section 31-8-1 and to lease such buildings and facilities to the county or municipality. No such ground lease shall be for a primary term in excess of the primary term of the lease with respect to the buildings and facilities to be constructed thereon.

(2) The counties and municipalities of the state are authorized to sublease buildings and facilities leased pursuant to subsection (1) of this section to the United States Postal Service or to any state or federal governmental agency. Any sublease entered into pursuant to this subsection may contain an option granting the sublessee the right to purchase the leased property upon the expiration of the primary term of the sublease, or upon such earlier date as may be agreed upon, at a price not to exceed the unpaid principal balance at such time.

Before entering into any lease agreement pursuant to this subsection, the board of supervisors or the governing authorities of the municipality shall follow and be subject to the same procedures regarding publishing notice, filing protest and holding an election specified for lease agreements under Section 31-8-11, except that the notice shall not state that the rental is a continuing obligation and a charge against the general credit and leasing power of the county or municipality.

HISTORY: Laws, 1990, ch. 564, § 4; Laws, 1996, ch. 473, § 1, eff from and after passage (approved April 5, 1996).

Editor's Notes — On June 18, 1990, the United States Attorney General interposed no objection to the addition of this section by Laws of 1990, Ch. 564.

RESEARCH REFERENCES

ALR.
Power of municipal corporation to lease or sublet property owned or leased by it. 47 A.L.R.3d 19.

Am. Jur.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 540, 556-559.

§ 31-8-9. Term of lease; pledge of full faith and credit; limitation of obligation to money appropriated.

Subject to the provisions of this chapter, any such lease agreement may extend over any period, notwithstanding any provision or rule of law to the contrary, and any such lease agreement shall be binding upon the county or municipality and any other party thereto in accordance with its terms. Any such lease agreement may include, at the discretion of the governing authorities entering into the same, a pledge of the full faith and credit of such county or municipality for the payment of its monetary obligations thereunder; or may contain a provision that so long as no default of any monetary obligation of the lessee has occurred, the lessee's obligation to pay any amounts due or perform any covenants requiring or resulting in the expenditure of money shall be contingent and expressly limited to the extent of any specific appropriation made by the governing authorities to fund such lease agreement, and that nothing contained in the lease agreement shall be construed as creating any monetary obligation on the part of the lessee beyond such current and specific appropriation. Obligations incurred by a county or municipality under the provisions of this chapter secured by a pledge of its full faith and credit shall be included within the limitation on bonded indebtedness established by law for counties and municipalities.

HISTORY: Laws, 1990, ch. 564, § 5, eff from and after July 1, 1990.

Editor's Notes — On June 18, 1990, the United States Attorney General interposed no objection to the addition of this section by Laws of 1990, Ch. 564.

RESEARCH REFERENCES

ALR.

Power of municipal corporation to lease or sublet property owned or leased by it. 47 A.L.R.3d 19.

§ 31-8-11. Notice of intent to lease; protest; election; advertisement of lease agreement; award of lease.

Before entering into any lease agreement pursuant to this chapter secured by a pledge of its full faith and credit, the governing authorities of any county or municipality shall publish notice of their intention to receive suitable proposals for the leasing of such buildings, facilities or equipment. Such notice shall specify the nature of the proposed building, facility or equipment, the general geographic area in which the same is to be located, the term of the proposed lease agreement, that the obligation to pay rentals during the primary term is to be a continuing obligation of and a charge against the general credit and leasing power of the county or municipality, and the date and hour on or before which such proposals may be received. Such notice shall be published by municipalities and counties in the same manner as required for publishing notice of intention to issue general obligation bonds of the county or municipality, as appropriate. If at least twenty percent (20%), or fifteen hundred (1500), of the qualified electors of a county, whichever is less, or at least ten percent (10%), or fifteen hundred (1500), of the qualified electors of a municipality, whichever is less, file a written protest with the appropriate governing authorities, then an election shall be called by the county in the same manner as provided for the issuance of county general obligation bonds in Sections 19-9-11 through 19-9-17, Mississippi Code of 1972, or by a municipality in the same manner as provided for the issuance of municipal general obligation bonds in Sections 21-33-307 through 21-33-311, Mississippi Code of 1972, to determine whether or not the proposed lease agreement may be executed by the county or municipality. The lease agreement shall be advertised for competitive sealed proposals once each week for two (2) consecutive weeks in a regular newspaper published or having a general circulation in the county or municipality of the governing authority. The date as published for the proposal opening shall be not less than five (5) working days after the last published notice. The lease shall be awarded to the person submitting the lowest and best proposal; however, all proposals may be rejected.

HISTORY: Laws, 1990, ch. 564, § 6, eff from and after July 1, 1990.

Editor's Notes — On June 18, 1990, the United States Attorney General interposed no objection to the addition of this section by Laws of 1990, Ch. 564.

RESEARCH REFERENCES

ALR.

Power of municipal corporation to lease or sublet property owned or leased by it. 47 A.L.R.3d 19.

Public contracts: authority of state or its subdivision to reject all bids. 52 A.L.R.4th 186.

Am. Jur.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 540, 556-559.

§ 31-8-13. Full and complete authority for leases.

This chapter, without reference to any other statute, shall be deemed to be full and complete authority for the authorization, execution and delivery of lease agreements authorized hereunder, and shall be construed as an additional and alternative method therefor, and none of the present restrictions, requirements, conditions and limitations of law applicable to the acquisition, construction and drawing of buildings or facilities in this state shall apply to lease agreements under this chapter, and no proceedings shall be required for the authorization, execution and delivery of such leases other than those required herein, and all powers necessary to be exercised in order to carry out the provisions of this chapter are hereby conferred.

HISTORY: Laws, 1990, ch. 564, § 7, eff from and after July 1, 1990.

Editor's Notes — On June 18, 1990, the United States Attorney General interposed no objection to the addition of this section by Laws of 1990, Ch. 564.

CHAPTER 9.

SURPLUS PROPERTY PROCUREMENT COMMISSION

Sec.	
31-9-1.	Definitions.
31-9-3.	Repealed.
31-9-5.	Powers and duties.
31-9-7.	Repealed.
31-9-9.	Laws regulating public purchases waived.
31-9-11.	Repealed.
31-9-13.	Revolving fund.
31-9-15.	Inventories.

§ 31-9-1. Definitions.

(1) For purposes of this chapter, the term "office of general services" shall mean the Governor's office of general services acting through the bureau of surplus property.

(2) Wherever the term "surplus property procurement commission" appears in the laws of the State of Mississippi, it shall be construed to mean the Governor's office of general services.

HISTORY: Codes, 1942, § 9028-01; Laws, 1946, ch. 214, § 1; Laws, 1948, ch. 359, § 1; Laws, 1952, ch. 336, §§ 1-3; Laws, 1964, ch. 492; Laws, 1980, ch. 491, § 23; Laws, 1984, ch. 488, § 25, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References — Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Use of surplus federal property by state educational institutions, see § 35-3-15.

§ 31-9-3. Repealed.

Repealed by Laws, 1984, ch. 488, § 38, eff from and after July 1, 1984.

§ 31-9-3. [Codes, 1942, § 9028-02; Laws, 1946, ch. 214, § 2]

Editor's Notes — Former § 31-9-3 provided for the organization of the surplus property procurement commission.

§ 31-9-5. Powers and duties.

(1) The Office of General Services with the approval of the Public Procurement Review Board shall negotiate and contract with any appropriate

agency or commission of the United States government or of the State of Mississippi for the purpose of purchasing or otherwise securing surplus material or property in bulk lots or quantities, and for the purpose of assisting all agencies, departments, institutions and instrumentalities of the State of Mississippi, the boards of supervisors of the various counties, and the governing authorities of the various municipalities, drainage districts and other taxing units in purchasing, leasing or otherwise securing surplus material or property. After ascertaining the needs of the various state departments and institutions, counties, municipalities, drainage districts and other taxing units, the Office of General Services may enter into contracts with the governing authorities of such governmental entities as will enable them to carry out the provisions of this section.

(2) The Office of General Services also may acquire state or federal government surplus property for nonprofit and tax exempt health and educational institutions, Boy Scouts, Girl Scouts, Camp Fire Girls, military academies, volunteer fire departments, nonprofit cooperative water associations, Boys Clubs of America and Girls Clubs of America; however, deliveries to these institutions shall be made only after they have established their eligibility by meeting the requirements of the federal government, have requested the Office of General Services to act for them in acquiring government surplus property, and have agreed to comply with both the state and federal laws pertaining to acquisition and utilization of the property.

(3) [Repealed]

(4) The Office of General Services may do all other things which may be necessary to effectuate the purposes of this section.

HISTORY: Codes, 1942, §§ 9028-03, 9028-05, 9028-08; Laws, 1946, ch. 214, §§ 3, 5; Laws, 1952, ch. 337, §§ 1-5; Laws, 1956, ch. 366, §§ 1-5; Laws, 1958, ch. 470, § 1; Laws, 1960, ch. 377, § 2; Laws, 1960, ch. 398, § 2; Laws, 1962, ch. 484, § 10; Laws, 1971, ch. 450, § 1; Laws, 1984, ch. 488, § 26; Laws, 1992, ch. 572 § 1; Laws, 1994, ch. 392, § 1; Laws, 2004, ch. 577, § 1, eff from and after July 1, 2004.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Former (3), which authorized state agencies to donate goods or services for the support of local chapters of the American Red Cross, was repealed by its own terms, effective from and after July 1, 2005.

OPINIONS OF THE ATTORNEY GENERAL

Under Miss. Code Section 31-9-5, it is "self-evident" that Office of General Services has specific statutory authority to contract for federal surplus; further, Office of General Services may accept state surplus property, but is not required to accept such property; however, whether or not such arrangement would be prohibited by any federal-state agreement or federal law regarding federal surplus is question of federal law. Patterson, May 12, 1993, A.G. Op. #93-0176.

§ 31-9-7. Repealed.

Repealed by Laws, 1984, ch. 488, § 38, eff from and after July 1, 1984.

§ 31-9-7. [Codes, 1942, § 9028-04; Laws, 1946, ch. 214, § 4; Laws, 1948, ch. 374, § 1; Laws, 1958, ch. 470, § 2; Laws, 1960, ch. 398, § 1; Laws, 1966, ch. 445, § 34; Laws, 1970, ch. 474, § 1]

Editor's Notes — Former § 31-9-7 provided for a director and employees of the surplus property procurement commission.

§ 31-9-9. Laws regulating public purchases waived.

All laws or parts of laws requiring the various state institutions, departments, and agencies, the boards of supervisors of the various counties, and the governing authorities of the various municipalities, drainage districts, and other taxing units to advertise or request and receive bids for the purchase of furniture, equipment, supplies, and other commodities are hereby waived for the purposes of this chapter and shall not be applicable to purchases made hereunder.

HISTORY: Codes, 1942, § 9028-06; Laws, 1946, ch. 214, § 6.

Cross References — Kind of paper to be used in printing, see § 31-1-5.
Requirement for bids on public purchases, see § 31-7-13.

§ 31-9-11. Repealed.

Repealed by Laws, 1984, ch. 488, § 38, eff from and after July 1, 1984.

§ 31-9-11. [Codes, 1942, § 9028-07; Laws, 1946, ch. 14, § 7]

Editor's Notes — Former § 31-9-11 contained provisions for compensating members of the surplus property procurement commission.

§ 31-9-13. Revolving fund.

In lieu of regular appropriations, the Department of Finance and Administration may assess against each institution, agency or individual acquiring surplus property from and through the Department of Finance and Administration a fee or commission on each item in sufficient amount to establish and maintain a revolving fund, to be used to operate and support the Department of Finance and Administration. The Department of Finance and Administration shall follow the procedure outlined by the United States Department of Health and Human Services in establishing the fund, and the fund shall never exceed more than One Million Dollars ($1,000,000.00) above and beyond four (4) months of operating expenses of the Department of Finance and Administration.

With this revolving fund so acquired, the Department of Finance and Administration shall meet all items of expense incurred in acquiring, transporting, warehousing and distributing property to eligible applicants and also all items of expense incident to the operation of the offices of the Department of Finance and Administration, including salaries, office supplies and necessary general expenses, and all other items as are covered by legislative appropriation for those purposes.

The Department of Finance and Administration may escalate, budget and expend funds from the revolving fund in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00) in any one fiscal year to carry out the provisions of this section.

HISTORY: Codes, 1942, § 9028-08; Laws, 1952, ch. 337, §§ 1-5; Laws, 1956, ch. 366, §§ 1-5; Laws, 1958, ch. 470, § 1; Laws, 1960, ch. 377, § 2; Laws, 1960, ch. 398, § 2; Laws, 1962, ch. 484, § 10; Laws, 1971, ch. 450, § 1; Laws, 1984, ch. 488, § 27; Laws, 2005, ch. 475, § 1; Laws, 2006, ch. 576, § 1; Laws, 2007, ch. 306, § 1, eff from and after July 1, 2007.

§ 31-9-15. Inventories.

The Office of General Services shall furnish to the State Auditor of Public Accounts copies of transfers of property to state boards, commissions and agencies on all property transferred to such agencies, federal reviews, in addition to an inventory on all furniture, equipment, machinery and vehicles used by the Office of General Services in carrying out the purposes of this chapter. The Office of General Services shall likewise keep a perpetual current inventory on all property in books and records.

HISTORY: Codes, 1942, § 9028-08; Laws, 1952, ch. 337, §§ 1-5; Laws, 1956, ch. 366, §§ 1-5; Laws, 1958, ch. 470, § 1; Laws, 1960, ch. 377, § 2; Laws, 1960, ch. 398, § 2; Laws, 1962, ch. 484, § 10; Laws, 1971, ch. 450, § 1; Laws, 1984, ch. 488, § 28; Laws, 1995, ch. 562, § 1; Laws, 2009, ch. 546, § 11, eff from and after passage (approved Apr. 15, 2009).

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

CHAPTER 11.

STATE CONSTRUCTION PROJECTS

In General.	31-11-1
Revenue-Producing Projects. [Repealed].	31-11-51
Additional Revenue-Producing Projects. [Repealed].	31-11-111

IN GENERAL

Sec.	
31-11-1.	Bureau of building, grounds, and real property management; definitions.
31-11-3.	Powers and duties.
31-11-4.	Facilities Management Advisory Committee.
31-11-5.	Repealed.
31-11-7.	Reports.
31-11-9.	Repealed.
31-11-11 through 31-11-23.	Repealed.
31-11-25.	Right of eminent domain.
31-11-27.	Study of capital needs; annual reports.
31-11-29.	Capital expense and development budget.
31-11-30.	Capital improvements costing $2 million or more to be funded in two phases; each phase to be funded in separate legislative sessions; phase 1 to be preplanned capital improvements project budget projection; phase 2 to be actual repair, renovation, construction, remodeling, etc.; exemptions.
31-11-31.	Commission designated to act for state in matters relating to Federal Higher Education Facilities Act of 1963.
31-11-33.	Construction of new public facility to comply with certain building code standards; definitions; specifications; regulation of certain building features.
31-11-35.	Adoption of rules and regulations regarding energy performance of state-funded buildings; design and construction of major facility projects to meet or exceed certain energy requirements.

§ 31-11-1. Bureau of building, grounds, and real property management; definitions.

(1) For purposes of this chapter, the term "state building commission" shall mean the Governor's office of general services acting through the bureau of building, grounds and real property management.

(2) Wherever the term "state building commission" or "building commission" appears in the laws of the State of Mississippi, it shall be construed to mean the Governor's office of general services.

HISTORY: Codes, 1942, § 9023-01; Laws, 1944, ch. 328, § 1; Laws, 1984, ch. 488, § 29, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Authority as to lease or rent of certain lands in the city of Jackson, see § 29-1-203.

Authority with respect to state flood insurance program, see §§ 29-13-1 et seq.

Performance of services on state property by the director of the highway department, see § 65-1-10.

§ 31-11-3. Powers and duties.

(1) The Department of Finance and Administration, for the purposes of carrying out the provisions of this chapter, in addition to all other rights and powers granted by law, shall have full power and authority to employ and compensate architects or other employees necessary for the purpose of making inspections, preparing plans and specifications, supervising the erection of any buildings, and making any repairs or additions as may be determined by the Department of Finance and Administration to be necessary, pursuant to the rules and regulations of the State Personnel Board. The department shall have entire control and supervision of, and determine what, if any, buildings, additions, repairs, demolitions or improvements are to be made under the provisions of this chapter, subject to the regulations adopted by the Public Procurement Review Board.

(2) The department shall have full power to erect buildings, make repairs, additions or improvements, demolitions, to grant or acquire easements or rights-of-way, and to buy materials, supplies and equipment for any of the institutions or departments of the state subject to the regulations adopted by the Public Procurement Review Board. In addition to other powers conferred, the department shall have full power and authority, as directed by the Legislature, or when funds have been appropriated for its use for these purposes, to:

(a) Build a state office building;

(b) Build suitable plants or buildings for the use and housing of any state schools or institutions, including the building of plants or buildings for new state schools or institutions, as provided for by the Legislature;

(c) Provide state aid for the construction of school buildings;

(d) Promote and develop the training of returned veterans of the United States in all sorts of educational and vocational learning to be supplied by the proper educational institution of the State of Mississippi, and in so doing allocate monies appropriated to it for these purposes to the Governor for use by him in setting up, maintaining and operating an office and employing a state director of on-the-job training for veterans and the personnel necessary in carrying out Public Law No. 346 of the United States;

(e) Build and equip a hospital and administration building at the Mississippi State Penitentiary;

(f) Build and equip additional buildings and wards at the Boswell Retardation Center;

(g) Construct a sewage disposal and treatment plant at the Mississippi State Hospital, and in so doing acquire additional land as may be necessary, and to exercise the right of eminent domain in the acquisition of this land;

(h) Build and equip the Mississippi central market and purchase or acquire by eminent domain, if necessary, any lands needed for this purpose;

(i) Build and equip suitable facilities for a training and employing center for the blind;

(j) Build and equip a gymnasium at Columbia Training School;

(k) Approve or disapprove the expenditure of any money appropriated by the Legislature when authorized by the bill making the appropriation;

(*l*) Expend monies appropriated to it in paying the state's part of the cost of any street paving;

(m) Sell and convey state lands when authorized by the Legislature, cause said lands to be properly surveyed and platted, execute all deeds or other legal instruments, and do any and all other things required to effectively carry out the purpose and intent of the Legislature. Any transaction which involves state lands under the provisions of this paragraph shall be done in a manner consistent with the provisions of Section 29-1-1;

(n) Collect and receive from educational institutions of the State of Mississippi monies required to be paid by these institutions to the state in carrying out any veterans' educational programs;

(o) Purchase lands for building sites, or as additions to building sites, for the erection of buildings and other facilities which the department is authorized to erect, and demolish and dispose of old buildings, when necessary for the proper construction of new buildings. Any transaction which involves state lands under the provisions of this paragraph shall be done in a manner consistent with the provisions of Section 29-1-1;

(p) Obtain business property insurance with a deductible of not less than One Hundred Thousand Dollars ($100,000.00) on state-owned buildings under the management and control of the department; and

(q) In consultation with and approval by the Chairmen of the Public Property Committees of the Senate and the House of Representatives, enter into contracts for the purpose of providing parking spaces for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building.

(3) The department shall survey state-owned and state-utilized buildings to establish an estimate of the costs of architectural alterations, pursuant to the Americans With Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The department shall establish priorities for making the identified architectural alterations and shall make known to the Legislative Budget Office and to the Legislature the required cost to effectuate such alterations. To meet the requirements of this section, the department shall use standards of accessibility that are at least as stringent as any applicable federal requirements and may consider:

(a) Federal minimum guidelines and requirements issued by the United States Architectural and Transportation Barriers Compliance Board and standards issued by other federal agencies;

(b) The criteria contained in the American Standard Specifications for Making Buildings Accessible and Usable by the Physically Handicapped and any amendments thereto as approved by the American Standards Association, Incorporated (ANSI Standards);

(c) Design manuals;

(d) Applicable federal guidelines;

(e) Current literature in the field;

(f) Applicable safety standards; and

(g) Any applicable environmental impact statements.

(4) The department shall observe the provisions of Section 31-5-23 in letting contracts and shall use Mississippi products, including paint, varnish and lacquer which contain as vehicles tung oil and either ester gum or modified resin (with rosin as the principal base of constituents), and turpentine shall be used as a solvent or thinner, where these products are available at a cost not to exceed the cost of products grown, produced, prepared, made or manufactured outside of the State of Mississippi.

(5) The department shall have authority to accept grants, loans or donations from the United States government or from any other sources for the purpose of matching funds in carrying out the provisions of this chapter.

(6) The department shall build a wheelchair ramp at the War Memorial Building which complies with all applicable federal laws, regulations and specifications regarding wheelchair ramps.

(7) The department shall review and preapprove all architectural or engineering service contracts entered into by any state agency, institution, commission, board or authority, regardless of the source of funding used to defray the costs of the construction or renovation project, for which services are to be obtained to ensure compliance with purchasing regulations and to confirm that the contracts are procured by a competitive qualification-based selection process except where such appointment is for an emergency project or for a continuation of a previous appointment for a directly related project. The provisions of this subsection (7) shall not apply to:

(a) Any architectural or engineering contract fully paid for by self-generated funds of any of the state institutions of higher learning;

(b) Any architectural or engineering contract that is self-administered at a state institution of higher learning as provided under Section 27-104-7(2)(b) or 37-101-15(m);

(c) Community college projects that are fully funded from local funds or other nonstate sources which are outside the Department of Finance and Administration's appropriations or as directed by the Legislature;

(d) Any construction or design projects of the State Military Department that are fully or partially funded from federal funds or other nonstate sources; and

(e) Any project of the State Department of Transportation.

(8)(a) The department shall have the authority to obtain annually from the state institutions of higher learning, the state community colleges and junior colleges, the Department of Mental Health, the Department of Corrections and the Department of Wildlife, Fisheries and Parks information on all renovation and repair expenditures for buildings under their operation and control, including duties, responsibilities and costs of any architect or engineer hired by any such institutions, and shall annually report the same to the Legislative Budget Office, the Chairman of the House Public Property Committee and the Chairman of the Senate Public Property Committee before September 1.

(b) All state agencies, departments and institutions are required to cooperate with the Department of Finance and Administration in carrying out the provisions of this subsection.

(c) Expenditures shall not include those amounts expended for janitorial, landscaping or administrative support, but shall include expenditures from both state and nonstate sources.

(d) Expenditures shall not include amounts expended by the department on behalf of state agencies, departments and institutions through the Department of Finance and Administration administered contracts, but shall include amounts transferred to the Department of Finance and Administration for support of such contracts.

(9) As an alternative to other methods of awarding contracts as prescribed by law, the department may elect to use the method of contracting for construction projects set out in Sections 31-7-13.1 and 31-7-13.2; however, the dual-phase design-build method of construction contracting authorized under Section 31-7-13.1 may be used only when the Legislature has specifically required or authorized the use of this method in the legislation authorizing a project.

(10) The department shall have the authority, for the purposes of carrying out the provisions of this chapter, and in addition to all other rights and powers granted by law, to create and maintain a list of suspended and debarred contractors and subcontractors. Consistent with this authority, the department may adopt regulations governing the suspension or debarment of contractors and subcontractors, which regulations shall be subject to the approval of the Public Procurement Review Board. A suspended or debarred contractor or subcontractor shall be disqualified from consideration for contracts with the department during the suspension or debarment period in accordance with the department's regulations.

(11) This section shall not apply to the Mississippi State Port Authority.

HISTORY: Codes, 1942, § 9023-02; Laws, 1944, ch. 328, §§ 2-4; Laws, 1946, ch. 386, §§ 1, 2; Laws, 1950, ch. 392, § 2; Laws, 1981, ch. 323, § 1; Laws, 1984, ch. 488, § 30; Laws, 1991, ch. 411, § 1; Laws, 1993, ch. 615, § 2; Laws, 1994, ch. 448, § 1; Laws, 1994 Ex Sess, ch. 26, § 24; Laws, 2004, 3rd Ex Sess, ch. 1, § 189; Laws, 2005, ch. 504, § 1; Laws, 2006, ch. 457, § 3; Laws, 2006, ch. 579, § 2; Laws, 2007, ch. 494, § 8; Laws, 2008, ch. 488, § 1; Laws, 2010, ch. 314, § 3; Laws, 2011, ch. 485, § 1; Laws, 2012, ch. 485, § 3; Laws, 2014, ch. 533, § 3; Laws, 2016, ch. 399, § 2; Laws, 2017, ch. 351, § 1, eff from and after July 1, 2017; Laws, 2019, ch. 465, § 2, eff from and after July 1, 2019.

Joint Legislative Committee Note — Section 3 of ch. 457, Laws of 2006, effective from and after July 1, 2006 (approved March 23, 2006), amended this section. Section 2 of ch. 579, Laws of 2006, effective from and after July 1, 2006 (approved April 21, 2006), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 579, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

The Boswell Retardation Center, referred to in (2)(f), is now known as the Boswell Regional Center.

Laws of 1984, ch. 328, effective from and after July 1, 1984, authorized the state building commission and the state department of mental health to sell certain property to the city of Magee, Mississippi, and to use the proceeds of such sale to purchase certain property for the South Mississippi Retardation Center, now known as the South Mississippi Regional Center.

Laws of 1986, ch. 443, authorizes the issuance of bonds of the state or the borrowing of money for the acquisition of certain property to be used for state offices.

Laws of 1987, ch. 405, effective from and after passage (approved March 20, 1987), provides that the Bureau of Building, Grounds and Real Property Management of the Governor's office of General Services is authorized and directed to lease certain public property on Capers Avenue in Jackson, Mississippi to the State Board of Rehabilitation Services for the use of the Division of Vocational Rehabilitation and for related purposes. It is also provided that the lease will contain such terms and conditions as may be necessary and appropriate to meet requirements imposed upon the Board for programs operated on the property, and that the Bureau of Building, Grounds and Real Property Management and the Office of the Attorney General are authorized to prepare and file the necessary related documents.

Laws of 1988, ch. 341, effective from and after its passage (approved April 15, 1988), provides as follows:

"SECTION 1. The Bureau of Building, Grounds and Real Property Management of the Governor's Office of General Services, hereinafter in this act referred to as "bureau," is hereby authorized and empowered, in its discretion, to expend not more than Thirty-two Thousand Two Hundred Forty-one Dollars and Sixty-seven Cents ($32,241.67) out of Special Fund Number 3921 in the State Treasury (created in Chapter 328, General Laws of 1984) to repair and remodel those two (2) buildings located on land in the First Judicial District of Harrison County, Long Beach, Mississippi, described as follows:

"A parcel of land beginning at the intersection of the east line of Lot 46 of the White & Calvert Survey and the north margin of Railroad Street and from such point run thence North along the east line of Lot 46 a distance of 250 feet to the property of the State, run thence South 77 degrees 52 minutes West a distance of 260 feet along the property of the State to a point, run thence South 16 degrees 13 minutes East a distance of 271.5 feet to the north margin of Railroad Street; and run thence North 69 degrees 53 minutes East along the north margin of Railroad Street a distance of 190 feet, to the point of beginning. Such property is bounded south by Railroad Street, West and North by the State, and East by Cart.

"SECTION 2. The State Board of Mental Health, hereinafter in this act referred to as "board," shall recommend to the bureau those repairs and remodeling to the buildings described in Section 1 of this act which the board determines necessary to convert such buildings for effective use by the South Mississippi Mental Retardation Center [now known as the South Mississippi Regional Center]. Final plans and specifications for the repair and remodeling shall be approved by both the bureau and the board. The actual work of repairs and remodeling shall be supervised by the bureau.

"SECTION 3. If the actual expenditure for the repair and remodeling authorized by this act is less than the balance held in Special Fund Number 3921, the bureau shall transfer the amount remaining in such special fund to the board. Any amounts so transferred to the board may be expended by the board for the use and benefit of the South Mississippi Retardation Center [now known as the South Mississippi Regional Center]

"SECTION 4. This act shall take effect and be in force from and after its passage."

Laws of 1989, ch. 365, as amended by Laws of 1990, ch. 551, § 1, authorizes and empowers the Division of General Services of the State Department of Finance and Administration to sell and convey certain state-owned land located in Hinds County to the offerer of the highest and best price.

Laws of 1994, ch. 515, § 1, effective from and after passage (approved March 25, 1994), provides as follows:

"SECTION 1. The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management under Section 7-1-451 et seq. and Section 31-11-1 et seq., Mississippi Code of 1972, is authorized to construct and equip capital improvements and purchase equipment for the Department of Corrections as follows:

Department of Corrections	$13,413,000.00.
Central Mississippi Correctional Facility	$9,000,000.00.
Construct and equip a 128 bed male minimum security unit	$1,600,000.00.
Construct and equip a 120 bed maximum security reception diagnostic and classification unit	$6,080,000.00.
Construct and equip a 52 bed female minimum security unit	$1,220,000.00.
Construct and equip a work compound building	$100,000.00.
Modular units for 200 beds	$950,000.00.
State Penitentiary at Parchman	$1,463,000.00.
Construct and equip classroom and office additions to the Alcohol and Drug Program	$588,000.00.
Construct and equip classroom and office additions to the Pre-Release Program	$875,000.00.
Three additional Restitution Centers	$1,000,000.00.
Renovation of existing Restitution Centers	$1,000,000.00.
Total	$13,413,000.00."

Laws of 1994, ch. 526, §§ 1, 2, eff from and after July 1, 1994, provides as follows:

"SECTION 1. The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management under Section 7-1-451 et seq., and Section 31-11-1 et seq., Mississippi Code of 1972, is hereby authorized to construct the following capital improvements:

Administration Building	$5,000,000.00.
Department of Wildlife, Fisheries and Park	
Construct, equip and furnish an administration building on the department property at LeFleurs Bluff State Park or any other state-owned property in Jackson, Mississippi	$5,000,000.00.

"SECTION 2. The Department of Finance and Administration is hereby expressly authorized and empowered to receive and expend any local or other source funds in connection with the expenditure of funds appropriated by the legislature."

Amendment Notes — The 2019 amendment divided the former single paragraph in (7) into (7)(a) and (c) through (e), and added (b), and deleted "nor shall they apply to," "The provisions of this subsection (7) shall not apply to" and "nor shall they apply to" from the beginning of (c), (d), and (e), respectively; and made minor stylistic changes.

Cross References — Creation of the Department of Finance and Administration, see § 7-1-451.

Creation of the public procurement review board, see § 27-104-7.

Other duties with respect to the Heber Ladner Building, see § 29-5-99.

Requirement that plaques on buildings financed with funds of state or political subdivision acknowledge contribution of taxpayers, see § 29-5-151.

Powers and duties concerning the sale or acquisition of property by the board of trustees of state institutions of higher learning for use or benefit of the Mississippi State University of Agriculture and Applied Science, see § 37-113-7.

Authority with respect to Boswell Regional Center, see § 41-19-203.

Powers and duties with respect to leasing state lands within wildlife conservation management areas, see § 49-5-13.

Duties concerning leasing of state park land, see § 55-3-47.

Preparation of energy management plans, see § 57-39-101 et seq.

Authority to convey to the Mississippi Department of Transportation a right-of-way across certain lands, see § 65-1-161.

JUDICIAL DECISIONS

1. In general.

In an action by a prime contractor against the Building Commission alleging breach of duty to coordinate the work between three prime contractors by failing to properly supervise the construction of a building, the trial court properly sustained the Building Commission's demurrer to the complaint since § 31-11-3 does not require that the Building Commission coordinate or supervise but merely authorizes it to employ independent contractors for that purpose; nor did the Building Commission have an "implied" contractual duty to coordinate the work of three prime contractors and to see that the work of each was performed properly, since the contracts with the prime contractors showed that the Building Commission relied upon the contractors to coordinate among themselves. Hanberry Corp. v. State Bldg. Com., 390 So. 2d 277, 1980 Miss. LEXIS 2087 (Miss. 1980).

In a proceeding instituted by the state building commission to enjoin the board of trustees of state institutions of higher learning from using self-generated funds, as distinguished from legislatively appropriated funds, to construct facilities at the institutions under its supervision without the approval of and control by the building commission, the chancery court properly dissolved a temporary injunction and dismissed the bill of complaint although it should have relied upon Miss Const § 213-A, which gives the board of trustees management and control of the institutions under its supervision, as well as upon § 37-101-15, which sets out the general powers and duties of the board. The powers and duties granted to the building commission under § 31-11-3 apply only to management and control of funds legislatively appropriated to both agencies, while the management and control of self-generated funds remain with the constitutionally organized board of trustees. State ex rel. Allain v. Board of Trustees, 387 So. 2d 89, 1980 Miss. LEXIS 2050 (Miss. 1980).

The authority given by Code 1972 § 21-19-25 to municipalities for the adoption of building codes does not go so far as to authorize municipalities to require the State Building Commission to submit plans and specifications for the construction of buildings or pay fees to municipalities for building permits; the grant of specific power to the Commission under Code 1972 § 31-11-3 to construct state buildings supersedes municipal building codes. Jackson v. Mississippi State Bldg. Com., 350 So. 2d 63, 1977 Miss. LEXIS 2214 (Miss. 1977).

OPINIONS OF THE ATTORNEY GENERAL

Section 31-11-3 delegates plenary power to the Commission to construct state buildings. Such grant of specific power denies contrary power. Oakes, September 13, 1996, A.G. Op. #96-0630.

Each county is required under Miss. Code Ann. § 19-7-1 to build a jail within the corporate limits of the municipality where the courts are required to sit. A municipality is obligated to grant a special exception to its zoning ordinances unless it is determined, consistent with the facts, that construction of a county jail would create a public nuisance or a clear and present danger to the public health and welfare. Yancey, Mitchell, March 23, 2007, A.G. Op. #07-00120, 2007 Miss. AG LEXIS 75.

RESEARCH REFERENCES

ALR.

Construction and effect of § 504 of the Rehabilitation Act of 1973 (29 USCS § 794) prohibiting discrimination against otherwise qualified handicapped individuals in specified programs or activities. 44 A.L.R. Fed. 148.

Construction and application of Architectural Barriers Act (42 USCS §§ 4151-4157) providing for design and construction of public buildings to accommodate physically handicapped. 78 A.L.R. Fed. 877.

Am. Jur.

13 Am. Jur. 2d, Buildings § 31.

15 Am. Jur. 2d, Civil Rights § 60.5.

4 Am. Jur. Legal Forms 2d, Buildings §§ 49:11 et seq. (moving or demolishing buildings).

§ 31-11-4. Facilities Management Advisory Committee.

(1) There is hereby created the Facilities Management Advisory Committee, hereinafter referred to as the "committee," for the purpose of advising the Bureau of Building, Grounds and Real Property Management, Department of Finance and Administration, with its duties of preplanning, construction, repair and renovation for buildings of all state agencies, institutions and departments.

(2) The committee shall be composed of the following eight (8) members:

(a) The Chairman and Vice-Chairman of the Senate Public Property Committee;

(b) The Chairman and Vice-Chairman of the House Public Building, Grounds and Lands Committee;

(c) Two (2) Senators appointed by the Lieutenant Governor; and

(d) Two (2) Representatives appointed by the Speaker of the House of Representatives.

(3) The committee shall advise the Bureau of Building, Grounds and Real Property Management with its duties of preplanning, construction, repair and renovation for buildings of all state agencies, institutions and departments, including but not limited to the following:

(a) Traveling with the Bureau of Building, Grounds and Real Property Management to inspect and consider requests for improvement and repair of buildings of state agencies, institutions and departments;

(b) Acquiring a working knowledge of state building matters in order to become leaders in facility related legislation; and

(c) Advising and making recommendations to the Legislature on matters relating to preplanning, construction, repair and renovation for all state buildings.

(4) The members of the committee shall have no jurisdiction or vote on any matter within the jurisdiction of the Bureau of Building, Grounds and Real Property Management.

(5) No committee member may receive per diem, travel or other expenses

unless authorized by the Management Committees of the Senate and the House of Representatives. Members of the committee shall be paid from the contingent expense funds of the Senate and the House of Representatives in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the committee will be paid while the Legislature is in session.

HISTORY: Laws, 1996, ch. 533, § 1, eff from and after passage (approved April 12, 1996).

§ 31-11-5. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983; and by Laws, 1984, ch. 488, § 38, eff from and after July 1, 1984.

§ 31-11-5. [Codes, 1942, § 9023-03; Laws, 1944, ch. 328, § 5]

Editor's Notes — Former § 31-11-5 prohibited nepotism by members of the state building commission.

§ 31-11-7. Reports.

The office of general services shall submit a full report of its work and all transactions carried on by it and a complete statement of all expenditures made by it, to each regular session of the legislature or to a special session before that time if its work has been completed.

HISTORY: Codes, 1942, § 9023-04; Laws, 1944, ch. 328, § 6; Laws, 1984, ch. 488, § 31, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

§ 31-11-9. Repealed.

Repealed by Laws, 1984, ch. 488, § 38, eff from and after July 1, 1984.

§ 31-11-9. [Codes, 1942, § 9023-05; Laws, 1944, ch. 328, § 7; Laws, 1950, ch. 467; Laws, 1980, ch. 560, § 11]

Editor's Notes — Former § 31-11-9 provided for compensation and expenses for members of former state building commission.

§§ 31-11-11 through 31-11-23. Repealed.

Repealed by Laws, 1984, ch. 488, § 32, eff from and after July 1, 1984.

§§ 31-11-11 through 31-11-19. [Codes, 1942, § 9023-11; Laws, 1946, ch. 446, §§ 1-9]

§§ 31-11-21 through 31-11-23. [Codes, 1942, § 9023-51; Laws, 1960, ch. 383, §§ 1-4]

Editor's Notes — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Former § 31-11-11 permitted establishment of a building commission revolving fund for transfers of funds appropriated but not spent.

Former § 31-11-13 permitted investment by state bond retirement commission of funds in building commission revolving fund in United States government securities.

Former § 31-11-15 provided for the purchase and sale of United States securities by state bond retirement commission.

Former § 31-11-17 provided that securities purchased under former §§ 31-11-11 through 31-11-19 be deposited with state treasurer.

Former § 31-11-19 required that the state bond retirement commission make rules and regulations to carry out the provisions of former §§ 31-11-11 through 31-11-19.

Former § 31-11-21 provided for borrowing money for interim financing of building projects.

Former § 31-11-23 provided that borrowed money shall be evidenced by interim certificates or negotiable notes, and also provided that income therefrom shall be exempt from taxes.

§ 31-11-25. Right of eminent domain.

The office of general services with the approval of the public procurement review board shall have the power and authority to acquire in its own name, or in the name of such other agency or instrumentality in the State of Mississippi as it may deem proper, by purchase, contribution or otherwise, all land and real property which shall be necessary and desirable in connection with the development or expansion of any state institution or public agency of this state upon any real property adjacent to or contiguous to such institution or agency or in connection with any project under the supervision of said office of general services for the construction, repair, remodeling, renovating, or making additions to any building structure or other facility which the office of general services is required or authorized by law to construct, repair, remodel, or make an addition to. If the office of general services shall be unable to agree with the owner or owners of any such land or real property which is necessary or desirable for the public use in connection with any such project, the office of general services shall have the power and authority to acquire any such land or real property by condemnation proceedings in the manner otherwise provided by law and, for such purpose, the right of eminent domain is hereby conferred upon and vested in said office of general services.

HISTORY: Codes, 1942, § 9023-52; Laws, 1960, ch. 382.5; Laws, 1962, ch. 604; Laws, 1984, ch. 488, § 33, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Eminent domain generally, see §§ 11-27-1 et seq.

Creation of the public procurement review board, see § 27-104-7.

JUDICIAL DECISIONS

1. In general.

Fee holder (the State of Mississippi) was not named as a party to the condemnation proceedings, and because the condemnation was filed against the estate, the Mississippi Department of Finance and Administration (DFA) stood only to acquire that which was held by DFA, that was, the temporary rights of redemption and possession held by the estate; these rights expired on August 28, 2002, and thereafter, neither the estate nor the DFA had any interest or rights in the property. Smith v. Jackson State Univ., 995 So. 2d 88, 2008 Miss. LEXIS 454 (Miss. 2008).

A circuit court erred in reducing the acreage of a railroad right-of-way sought to be condemned by the State for a penitentiary based on its finding that the State had shown no need for more than a short stretch of the right-of-way where the circuit court found neither fraud nor clear abuse of discretion. Governor's Office of General Services v. Carter, 573 So. 2d 736, 1990 Miss. LEXIS 839 (Miss. 1990).

The State's acquisition of an abandoned railroad right-of-way contiguous to the boundary of a state penitentiary was clearly for a public purpose where there was no suggestion that the State had any plan to use the property in any fashion except to be a part of the state penitentiary grounds. Governor's Office of General Services v. Carter, 573 So. 2d 736, 1990 Miss. LEXIS 839 (Miss. 1990).

§ 31-11-27. Study of capital needs; annual reports.

(1)(a) The Department of Finance and Administration shall conduct a detailed study of the building and other capital needs at each state institution and at each community college and junior college immediately prior to September first in each year. This study shall include, but shall not be limited to, the following matters:

(i) An inventory of every state building and other capital facility which is the property of the State of Mississippi;

(ii) The location, date of construction or acquisition, the purpose for which used, outstanding indebtedness against such facility, if any, and cost of repairs for the preceding fiscal year;

(iii) An examination of the condition of the building or other facility, including current conditions and ratings of all roofs at each state agency, state institution of higher learning, community college and junior college;

(iv) An estimate of the cost of repairs required to place the facility in good condition;

(v) An estimate of the cost of major renovations, if contemplated; and

(vi) A determination of the new building and other facility needs of each institution with such needs classified under immediate or long range requirements.

(b) All state agencies, departments and institutions are hereby required and directed to cooperate with the Department of Finance and Administration in carrying out the provisions of this section. For purposes of validating subsection (1)(a)(iii) above, each roof of a building not planned for demolition must be visually inspected by institution or agency facilities' staff, by a licensed architect or engineer or by thermal imaging inspection at least every three (3) years.

(c) The Department of Finance and Administration shall submit a detailed report to the Legislative Budget Office, the House Public Property Committee and the Senate Public Property Committee on or before September first of each year. Such report shall be in such detail and in such form as may be prescribed by the Legislative Budget Office.

(d) The architect or building inspector of the Department of Finance and Administration shall make a biennial inspection of the New Capitol, Old Capitol, Woolfolk State Office Building, War Memorial Building, the Governor's Mansion, and all other buildings under jurisdiction of the Department of Finance and Administration for structural or other physical needs or defects of such buildings, and he shall further inquire of the department or its representatives regarding the condition of the buildings. He shall make a written report of his finding to the Department of Finance and Administration, Governor, Lieutenant Governor and Speaker of the House of Representatives. The report shall also make recommendations for repairs and list, by number, the priority which should be given to making necessary repairs.

(2)(a) In addition to any report required in subsection (1) of this section, the Department of Finance and Administration shall prepare and submit an annual report to the Legislative Budget Office, the House Public Property Committee and the Senate Public Property Committee describing the proposed capital improvements projects for state agencies, departments and institutions for the upcoming five-year period. The Department of Finance and Administration shall not be required to include in the report any project costing less than One Million Dollars ($1,000,000.00). The department shall submit the report before September 1 of each year. The report shall include at least the following information:

(i) A prioritized list of the projects proposed for the five-year period, with each project ranked on the basis of need, consistent with the primary goal of preserving existing capital assets where possible and replacing existing capital assets where necessary;

(ii) A prioritized list of the projects proposed for the next regular legislative session, with each project ranked on the basis of need, consistent with the primary goal of preserving existing capital assets where possible and replacing existing capital assets where necessary;

(iii) A prioritized list of the projects requested by each state agency, department or institution;

(iv) A detailed explanation of criteria used by the Department of Finance and Administration to rank projects for purposes of any list it prepares under this paragraph (a);

(v) A detailed statement of justification for each project;

(vi) The approximate cost for each project, including, but not limited to, itemized estimates of costs for preplanning, constructing, furnishing and equipping a project, and costs for property acquisition;

(vii) The estimated beginning date and completion date for each project;

(viii) Whether a project, as proposed, is a complete project or a phase or part of a project;

(ix) How a project will affect the operating budget of the applicable agency, department or institution for the upcoming five-year period, regarding such items as additional personnel requirements, utility costs, maintenance costs, security costs, etc. Any request for new construction other than replacement, or for purposes other than incidental expansion of existing facilities, shall also identify the total amount of nonstate funds to support such project;

(x) The proposed method of financing each project and the effect such financing will have on the state budget, including an estimate of any required debt service for the project, and an estimate of any federal funds or other funds that the agency, department or institution may have access to because of the project; and

(xi) A list of the projects requested by each agency, department or institution for the five-year period, with each project ranked by the appropriate agency, department or institution on the basis of need.

(b) To enable the Department of Finance and Administration to prepare the report required in this subsection (2), it may require all state agencies, departments and institutions to file a capital improvements projects request with such information and in such form and in such detail as the department may deem necessary and advisable. Such request shall be filed with the Department of Finance and Administration no later than August 1 of each year.

HISTORY: Codes, 1942, § 9023-54; Laws, 1962, ch. 608, §§ 1-3; Laws, 1964, ch. 572, § 1; Laws, 1984, ch. 488, § 34; Laws, 1994, ch. 439, § 1, eff from and July 1, 1994; Laws, 2000, ch. 531, § 5, eff from and after passage (approved Apr. 30, 2000); Laws, 2018, ch. 450, § 1, eff from and after July 1, 2018.

Cross References — Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Functions of capitol commission, see §§ 29-5-1 et seq.

§ 31-11-29. Capital expense and development budget.

The legislative budget office shall prepare and submit to each regular session of the legislature a “capital expense and development” budget based on information furnished as herein provided by the office of general services, plus such other information as may be obtained. The said budget shall contain an estimate of the immediate and the long term capital needs of each state department, agency, institution, and each junior college. Such budget shall include a description of the buildings and other facilities which are recommended as needed at each institution, along with an estimate of the cost. The budget shall also include a suggested method of financing the immediate needs. “Immediate needs” shall be construed to mean: buildings, major improvements, and other facilities required for the proper functioning of the institution for the next year. “Long range” needs shall be construed to mean: buildings, major improvements, and other facilities of a similar nature which may be required at some indefinite date in the future.

HISTORY: Codes, 1942, § 9023-55; Laws, 1962, ch. 608, § 4; Laws, 1984, ch. 488, § 35, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

§ 31-11-30. Capital improvements costing $2 million or more to be funded in two phases; each phase to be funded in separate legislative sessions; phase 1 to be preplanned capital improvements project budget projection; phase 2 to be actual repair, renovation, construction, remodeling, etc.; exemptions.

(1) Every capital improvements project for new facilities, costing Two Million Dollars ($2,000,000.00) or more, which is developed to repair, renovate, construct, remodel, add to or improve a state-owned public building shall be funded by the Legislature in two (2) phases. The two-phase funding requirement shall not apply to capital improvements projects for a state-owned port or where the Legislature finds that an emergency or critical need must be met or a court order complied with. The two (2) phases shall not be funded in the same regular session of the Legislature. Each phase shall be funded in a separate session of the Legislature. Phase 1 shall be a preplanned capital improvements project budget projection for the project and shall be funded first. Phase 2 shall be the actual repair, renovation, construction, remodeling, addition to or improvement of the state-owned public building and the acquisition of furniture and equipment for the capital improvements project and shall be funded second.

(2) For the purposes of this section:

(a) "Preplanned" or "preplanning" means the preliminary planning that establishes the program, scope, design and budget for a capital improvements project.

(b) "Emergency" has the meaning as defined in Section 31-7-1.

(c) "Critical need" means necessary to meet accreditation standards or necessary to respond to failures in planning.

(3) Every state agency that plans to repair, renovate, construct, remodel, add to or improve a state-owned public building shall submit a preplanned capital improvements project budget projection to the Bureau of Building, Grounds and Real Property Management for evaluation. The bureau shall assess the need for all preplanned projects submitted and shall compile a report on its findings. Any capital improvements project for new facilities costing less than Two Million Dollars ($2,000,000.00) shall not be required to be preplanned.

(4) Upon the completion of any preplanning for a capital improvements project, if such preplanning is funded with self-generated funds by a state agency, the plan shall be submitted to the bureau for evaluation.

(5) This section shall not apply to capital improvements projects authorized by the Legislature before the 2001 Regular Session of the Legislature.

(6) This section shall not apply to any community or junior college project funded in whole or in part by either state bonds or funds appropriated for that construction by the Legislature.

HISTORY: Laws, 2000, ch. 531, § 6; Laws, 2007, ch. 527, § 1, eff from and after July 1, 2007.

§ 31-11-31. Commission designated to act for state in matters relating to Federal Higher Education Facilities Act of 1963.

The office of general services of the State of Mississippi is hereby authorized and empowered to act as the commission designated to perform all functions on behalf of the State of Mississippi as provided for and required in Public Law No. 88-204 of the 88th Congress of the United States of America and being entitled "Higher Education Facilities Act of 1963" as thereafter amended, and the said office of general services is hereby granted such power and authority necessary for the purpose of performing for and on behalf of the State of Mississippi all things required to be done and performed by the office of general services as specified in said Public Law No. 88-204 of the 88th Congress of the United States government, as thereafter amended.

HISTORY: Codes, 1942, § 9023-56; Laws, 1964, ch. 413; Laws, 1984, ch. 488, § 36, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Federal Aspects— Higher Education Facilities Act of 1963, see note under 20 USCS § 701.

§ 31-11-33. Construction of new public facility to comply with certain building code standards; definitions; specifications; regulation of certain building features.

(1) For purposes of this section, the following terms shall have the meanings hereinafter ascribed:

(a) "Department" means the Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management.

(b) "Public facility" means any building or other facility owned by the State of Mississippi, or by any agency, department of the State of Mississippi, that is occupied, used or under the control of the State of Mississippi, or any agency or department of the State of Mississippi, or any junior college district of the State of Mississippi, or the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, or any institution under the jurisdiction of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi.

(2) Any public facility newly constructed from and after July 1, 2006, shall comply with and be built according to specifications not less stringent than those required by the International Code Council and such other standards as adopted by the department that provide guidelines for plumbing, electrical, gas, sanitary and other physical components of new building construction.

(3) Upon the awarding of a design contract for a new public facility, the architect/engineer shall prepare drawings and specifications in conformity with the code requirements in effect at the time of agreement or, if the code requirements at the time of the agreement are amended, then the drawings and specifications shall be prepared according to the more stringent standards.

(4) The department may regulate the height, number of stories and size of public facilities, the percentage of the lot that may be occupied, courts and other open spaces, and the location and use of public facilities.

HISTORY: Laws, 2006, ch. 579, § 1, eff from and after July 1, 2006.

§ 31-11-35. Adoption of rules and regulations regarding energy performance of state-funded buildings; design and construction of major facility projects to meet or exceed certain energy requirements.

(1) The Department of Finance and Administration shall adopt rules and regulations which:

(a) Optimize the energy performance of state-funded buildings throughout the state;

(b) Increase the demand for building and construction materials, finishes, furnishings and other products made in or incorporating materials produced in Mississippi;

(c) Improve environmental quality in this state by decreasing the discharge of pollutants from state-funded buildings;

(d) Conserve energy and utilize local and renewable energy sources;

(e) Protect and restore this state's natural resources by avoiding development of inappropriate state-funded building sites;

(f) Reduce the burden on public water supply and treatment by reducing potable water consumption; and

(g) Encourage obtaining ENERGY STAR designation from the United States Environmental Protection Agency to further demonstrate a building project's energy independence.

(2) Except as otherwise provided in Section 39-25-1, each major facility project shall be designed and constructed to meet or exceed the requirements of ASHRAE 90.1-2010 or any more stringent code adopted by the Bureau of Building, Grounds and Real Property Management and the Department of Finance and Administration.

(3) In order to achieve sustainable building standards, construction projects may utilize a nationally recognized high performance environmental building rating system; provided, however, that any such rating system that

uses a material or product-based credit system which is disadvantageous to materials or products manufactured or produced in Mississippi shall not be utilized. Additionally, such rating systems shall not exclude certificate credits for forest products certified by the Sustainable Forestry Initiative, Forest Stewardship Council or the American Tree Farm System. The Department of Finance and Administration shall designate rating systems which meet these criteria and may establish its own rating system.

(4) A nationally certified commissioning authority professional shall certify that the major facility project's systems for heating, ventilation, air-conditioning, energy conservation and water conservation are installed and working properly to ensure that each major facility project performs according to the major facility project's overall environmental design intent and operational objectives.

(5) For purposes of this section, a major facility project shall mean either:

(a) A state-funded new construction building project which is:

(i) From July 1 through December 31, 2009, the project shall be larger than twenty thousand (20,000) gross square feet;

(ii) From January 1, 2010, through December 31, 2010, the project shall be larger than fifteen thousand (15,000) gross square feet;

(iii) From January 1, 2011, through December 31, 2011, the project shall be larger than ten thousand (10,000) gross square feet; and

(iv) From January 1, 2012, and thereafter, the project shall be larger than five thousand (5,000) gross square feet.

(b) A state-funded renovation project which involves more than fifty percent (50%) of the replacement value of the facility where compliance is cost-effective and practical.

(6) A major facility project shall not mean a building, regardless of size, which does not have conditioned space as defined by Standard 90.1 of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers.

(7) For purposes of this section, a "major facility project" shall include, but not be limited to, the construction or renovation of buildings that are financed, in whole or in part, through the use of a Community Development Block Grant.

HISTORY: Laws, 2008, ch. 519, § 1; Laws, 2009, ch. 327, § 1; Laws, 2013, ch. 401, § 1; Laws, 2013, ch. 539, § 1; Laws, 2017, ch. 361, § 3, eff from and after passage (approved Mar. 20, 2017).

Joint Legislative Committee Note — Section 1 of ch. 401, Laws of 2013, effective from and after July 1, 2013 (approved March 20, 2013), amended this section. Section 1 of ch. 539, Laws of 2013, effective from and after July 1, 2013 (approved April 23, 2013), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee ratified the integration of these amendments as consistent with the legislative intent at the August 1, 2013, meeting of the Committee.

REVENUE-PRODUCING PROJECTS [REPEALED]

Sec.
31-11-51 through 31-11-89. Repealed.

§§ 31-11-51 through 31-11-89. Repealed.

Repealed by Laws, 1984, ch. 488, § 37, eff from and after July 1, 1984.

§ 31-11-51. [Codes, 1942, § 9023-22; Laws, 1956, ch. 280, § 2]

§ 31-11-53. [Codes, 1942, § 9023-23; Laws, 1956, ch. 280, § 3; Laws, 1962, ch. 507, § 1]

§ 31-11-55. [Codes, 1942, § 9023-24; Laws, 1956, ch. 280, § 4]

§ 31-11-57. [Codes, 1942, § 9023-25; Laws, 1956, ch. 280, § 5]

§ 31-11-59. [Codes, 1942, § 9023-26; Laws, 1956, ch. 280, § 6]

§ 31-11-61. [Codes, 1942, § 9023-27; Laws, 1956, ch. 280, § 7]

§ 31-11-63. [Codes, 1942, § 9023-28; Laws, 1956, ch. 280, § 8]

§ 31-11-65. [Codes, 1942, § 9023-29; Laws, 1956, ch. 280, § 9]

§ 31-11-67. [Codes, 1942, § 9023-30; Laws, 1956, ch. 280, § 10]

§ 31-11-69. [Codes, 1942, § 9023-31; Laws, 1956, ch. 280, § 11]

§ 31-11-71. [Codes, 1942, § 9023-32; Laws, 1956, ch. 280, § 12]

§ 31-11-73. [Codes, 1942, § 9023-33; Laws, 1956, ch. 280, § 13]

§ 31-11-75. [Codes, 1942, § 9023-34; Laws, 1956, ch. 280, § 14]

§ 31-11-77. [Codes, 1942, § 9023-35; Laws, 1956, ch. 280, § 15]

§ 31-11-79. [Codes, 1942, § 9023-36; Laws, 1956, ch. 280, § 16]

§ 31-11-81. [Codes, 1942, § 9023-37; Laws, 1956, ch. 280, § 17]

§ 31-11-83. [Codes, 1942, § 9023-38; Laws, 1956, ch. 280, § 18]

§ 31-11-85. [Codes, 1942, § 9023-39; Laws, 1956, ch. 280, § 19]

§ 31-11-87. [Codes, 1942, § 9023-40; Laws, 1956, ch. 280, § 20]

§ 31-11-89. [Codes, 1942, § 9023-41; Laws, 1956, ch. 280, § 21]

Editor's Notes — Former § 31-11-51 set out definitions for terms used in former §§ 31-11-51 through 31-11-89.

Former § 31-11-53 set out the powers of the former state building commission.

Former § 31-11-55 authorized contracts, leases, and agreements by state institutions with the former state building commission.

Former § 31-11-57 authorized the issuance of negotiable revenue bonds by the former state building commission.

Former § 31-11-59 provided that revenue bonds issued have status of negotiable instruments and were exempt from taxation.

Former § 31-11-61 provided for the sale of bonds by the former state building commission.

Former § 31-11-63 provided that the proceeds of bonds be paid into a building commission construction fund.

Former § 31-11-65 provided for the validation of bonds that were issued.

Former § 31-11-67 stated that bonds issued under former §§ 31-11-51 through 31-11-89 did not constitute a debt of the state.

Former § 31-11-69 set out the terms and conditions provided in a resolution or lease contract relating to a project.

Former § 31-11-71 pledged the revenues for payment of bonds and established a sinking fund.

Former § 31-11-73 set out the rights and remedies of bondholders.

Former § 31-11-75 authorized the issuance of revenue refunding bonds.

Former § 31-11-77 stated that the bonds issued under former §§ 31-11-51 through 31-11-89 were legal investments for fiduciaries.

Former § 31-11-79 provided that property owned by the former state building commission was exempt from taxation.

Former § 31-11-81 permitted the former state building commission to accept grants and contributions.

Former § 31-11-83 provided that all moneys and revenue received by the former state building commission were deemed to be trust funds for the purposes set out in former §§ 31-11-51 through 31-11-89.

Former § 31-11-85 provided that existing laws were not affected by former §§ 31-11-51 through 31-11-89.

Former § 31-11-87 provided for representation and payment of expenses of former state building commission.

Former § 31-11-89 provided for the withdrawal of funds from the state building fund.

ADDITIONAL REVENUE-PRODUCING PROJECTS [REPEALED]

Sec.
31-11-111 through 31-11-139. Repealed.

§§ 31-11-111 through 31-11-139. Repealed.

Repealed by Laws, 1984, ch. 488, § 37, eff from and after July 1, 1984.

§ 31-11-111. [Codes, 1942, § 9023-61; Laws, 1963, 1st Ex Sess ch. 15, § 1; 1966, Ex Sess ch. 40, § 1]

§ 31-11-113. [Codes, 1942, § 9023-62; Laws, 1963, 1st Ex Sess ch. 15, § 2; 1966, Ex Sess ch. 40, § 2; Laws, 1972, ch. 513, § 1; Laws, 1978, ch. 508, § 1]

§§ 31-11-115 through 31-11-135. [Codes, 1942, §§ 9023-63 to 9023-72; Laws, 1963, 1st Ex Sess ch. 15, §§ 3-12]

§ 31-11-137. [Codes, 1942, § 9023-73; Laws, 1963, 1st Ex Sess ch. 15, § 13; Laws, 1983, ch. 313, § 2]

§ 31-11-139. [Codes, 1942, § 9023-74; Laws, 1963, 1st Ex Sess ch. 15, § 14]

Editor's Notes — Former § 31-11-111 provided for additional revenue-producing facilities for institutions of higher learning.

Former § 31-11-113 authorized the issuance of general obligation bonds of state.

Former § 31-11-115 provided for investigation and determination of need for additional revenue-producing facilities for institutions of higher learning.

Former § 31-11-117 required a declaration of need for additional revenue-producing projects.

Former § 31-11-119 pledged the state's full faith, credit, and taxing power.

Former § 31-11-121 provided for the issuance of general obligation bonds.

Former § 31-11-123 declared that bonds were negotiable instruments and exempt from taxation.

Former § 31-11-125 provided for the sale of bonds.

Former § 31-11-127 provided for the rights and remedies of bondholders.

Former § 31-11-129 provided for the validation of bonds.

Former § 31-11-131 provided that bonds were legal investments for fiduciaries.

Former § 31-11-133 provided for a special fund and for the transfer of pledged income and revenues derived from fees, rentals, and other charges to be paid by students, faculty members, and others.

Former § 31-11-135 provided for the levy of an ad valorem tax.

Former § 31-11-137 provided for the deposit and withdrawal of funds from the sale of bonds; established special fund known as the state institutions of higher learning revenue-producing facilities fund.

Former § 31-11-139 provided that existing laws were not affected by former §§ 31-11-111 through 31-11-139.

CHAPTER 13.

VALIDATION OF PUBLIC BONDS

Sec.

31-13-1. State Bond Attorney.
31-13-3. "Bonds" defined.
31-13-5. Determination of validity of bond issues.
31-13-7. Final decree validating bonds to be forever conclusive.
31-13-9. Validated bonds to be so stamped; use of facsimile.
31-13-11. Court costs and bond attorney's fee and expenses.

§ 31-13-1. State Bond Attorney.

The Governor, with the advice and consent of the Senate, shall appoint a qualified and practicing attorney at law, to be known as the State Bond Attorney, who shall possess the same qualifications for office as the Attorney General, who shall serve a term of office concurrent with that of the Governor or until his successor is appointed and qualified, and whose duties shall be those hereinafter specified.

HISTORY: Laws, 1992, ch. 302 § 1, eff from and after passage (approved March 2, 1992).

Editor's Notes — A former § 31-13-1 ([Codes, Hemingway's 1921 Supp. § 3812a; 1930, § 312; 1942, § 4313; Laws, 1907, ch. 28; Laws, 1928, ch. 32; Laws, 1984, ch. 488, § 331; Laws, 1986, ch. 370] Repealed by Laws, 1986, ch. 370, § 1, from and after July 1, 1990) provided for the appointment of a state's bond attorney.

Cross References — Qualifications for circuit and chancery court judges, see Miss. Const., Art. 6, § 154.

Qualifications for office of Attorney General, see Miss. Const., Art. 6, § 173.

§ 31-13-3. "Bonds" defined.

The word "bond" or "bonds," when used in this chapter, shall be deemed to include every form of written obligation that may be now or hereafter legally issued by any county, municipality, school district, road district, drainage district, levee district, sea wall district, and of any other district or subdivision whatsoever, as now existing or as may be hereafter created.

HISTORY: Codes, 1930, § 315; 1942, § 4316; Laws, 1928, ch. 32.

Cross References — Issuance of bonds for Gulf Regional District, see § 17-11-35.

Validation of bonds issued pursuant to Mississippi Regional Solid Waste Management Authority Act, see § 17-17-337.

Validation of bonds issued to finance construction and improvement of public facilities, see § 29-17-21.

Validation of refunding bonds issued under §§ 31-15-1 through 31-15-19, see § 31-15-19.

Validation of refunding bonds issued under §§ 31-15-21 through 31-15-27, see § 31-15-27.

Validation of notes evidencing temporary borrowings made in anticipation of issuance of state-supported debt, see § 31-17-181.

Validation of bonds issued by the Mississippi Development Bank, see § 31-25-37.

Authorization to validate bonds issued to fund the Institute for Technology Development, see § 31-29-15.

Issuance of municipal securities pursuant to Water Pollution Control Revolving Fund Act, see § 49-17-89.

Applicability of this chapter to bonds issued by the Pearl River Valley Water Supply District under the Metropolitan Area Water Supply Act (§§ 51-9-189 et seq.), see § 51-9-209.

Validation of bonds relating to the Pearl River Basin Development District, see § 51-11-27.

Validation of bonds issued for local governments freight rail service projects, see § 57-44-27.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from Mississippi Development Authority, see § 57-61-37.

Validation of bonds authorized by the Mississippi Major Economic Impact Act, see § 57-75-15.

Proceedings pertaining to bond validations, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. "Bond."

1. In general.

For purposes of Tax Injunction Act (28 USCS § 1341), plaintiffs have "plain, speedy and efficient remedy" for presenting their claims under § 5 of Voting Rights Act of 1965 in bond validation proceedings as set forth in §§ 31-13-3 through 31-13-7. Pendleton v. Heard, 642 F. Supp. 940, 1986 U.S. Dist. LEXIS 21116 (S.D. Miss. 1986), rev'd, 824 F.2d 448, 1987 U.S. App. LEXIS 10999 (5th Cir. Miss. 1987).

Municipality may issue bonds for purchase and maintenance of water works, payable serially over period of 25 years. Street v. Ripley, 173 Miss. 225, 161 So. 855, 1935 Miss. LEXIS 237 (Miss. 1935).

Statute authorizing validation of municipal bonds, held to include bonds for water works, payable solely from revenues derived therefrom. Street v. Ripley, 173 Miss. 225, 161 So. 855, 1935 Miss. LEXIS 237 (Miss. 1935).

2. "Bond."

Tax anticipation note met the definition of a bond under this statute because it was a written obligation from a county. Russell v. Humphreys Cnty. Bd. of Supervisors (In re Validation of Tax Anticipation Note), 187 So. 3d 1025, 2016 Miss. LEXIS 138 (Miss. 2016).

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 1 et seq.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 31-13-5. Determination of validity of bond issues.

When any county, municipality, school district, road district, drainage district, levee district, sea wall district, or any other district or subdivision authorized to issue bonds shall take steps to issue bonds for any purpose whatever, the officer or officers of such county, municipality, or district charged by law with the custody of the records of same shall, if the board issuing same so determine by order entered on its minutes, transmit to said bond attorney a certified copy of all legal papers pertaining to the issuance of said bonds, including transcripts of records and ordinances, proof of publication, and tabulation of vote, if any, and any other facts pertaining to said issuance. Said bond attorney shall thereupon as expeditiously as possible examine said legal papers, pass upon the sufficiency thereof, and render an opinion in writing, addressed to the board proposing to issue said bonds, as to the validity of same; and if any further action on the part of said board is necessary or any further data is desired, he shall indicate what is necessary to be done in the premises in order to make said bonds legal, valid, and binding. When in his opinion all necessary legal steps have been taken to make the said bond issue legal, valid, and binding, he shall render a written opinion to that effect and shall transmit all legal papers, together with his opinion, to the clerk of the chancery court of the county in which the district or municipality proposing to issue said bonds is situated, or if said district embraces more than one (1) county or parts of more than one county, then to the chancery clerk of any one of said counties. The chancery clerk shall file the same, enter the same on the docket of the chancery court, and shall promptly notify the chancellor of the district in writing that said papers are on file and the cause has been docketed. The chancellor shall then notify the chancery clerk to set the matter for hearing at some future date, not less than ten (10) days thereafter, and the clerk shall give not less than five (5) days' notice by making at least one (1) publication in some paper published in the county where the case is docketed, addressed to the taxpayers of the county, municipality, or district proposing to issue said bonds, advising that the matter will be heard on the day named. If on the day set for hearing there is no written objection filed by any taxpayer to the issuance of said bonds, a decree approving the validity of same shall be entered by the chancellor; and if the chancellor be not present the clerk shall forward him the decree prepared by the state's bond attorney for his signature, and shall enter the said decree upon his minutes in vacation.

If no written objection is filed to the validation of the bonds, certificates of indebtedness, or other written obligations which are being validated, by any taxpayer to the issuance of same, then the validation decree shall be final and forever conclusive from its date, and no appeal whatever shall lie therefrom.

If at the hearing any taxpayer of the county, municipality, or district issuing said bonds appears and files, or has filed written objection to the issuance of said bonds, then the chancellor, or the chancery clerk if the chancellor be not present, shall set the case over for another day convenient to the chancellor, not less than ten days thereafter, and shall notify the bond attorney to appear and attend the hearing. On the hearing the chancellor may hear additional competent, relevant and material evidence under the rules applicable to such evidence in the chancery court, so as to inquire into the validity of the bonds or other obligations proposed to be issued, and enter a decree in accordance with his finding.

Where written objections have been filed to the validation but not otherwise, if either party shall be dissatisfied with the decree of the chancellor, an appeal shall be granted as in other cases, provided such appeal be prosecuted and bond filed within twenty (20) days after the chancellor enters his decree. However, no appeal shall lie in any case unless written objection has been filed to the validation of the bonds or other obligations by the time set for the validation hearing. The chancery clerk shall certify the record to the supreme court as in other cases, and the supreme court shall hear the case as a preference case.

HISTORY: Codes, Hemingway's 1921 Supp. § 3812b; 1930, § 313; 1942, § 4314; Laws, 1917, ch. 28; Laws, 1922, ch. 252; Laws, 1928, ch. 32.

Cross References — Validation of bonds to carry out purposes of Gulf Regional District Law, see § 17-11-51.

Validation of bonds issued pursuant to Mississippi Regional Solid Waste Management Authority Act, see § 17-17-337.

Validation of revenue bonds issued by county cooperative service districts, see § 19-3-106.

Issuance of county bonds and notes, see §§ 19-9-1 et seq.

Issuance of municipal bonds, see §§ 21-33-301 et seq.

Validation of bonds issued to finance construction and improvement of public facilities, see § 29-17-21.

Validation of refunding bonds issued under §§ 31-15-1 through 31-15-19, see § 31-15-19, see § 31-15-19.

Validation of refunding bonds issued under §§ 31-15-21 through 31-15-27, see § 31-15-27.

Validation of notes evidencing temporary borrowings made in anticipation of issuance of state-supported debt, see § 31-17-181.

Validation of bonds issued by the Mississippi Development Bank, see § 31-25-37.

Validation of refunding bonds, see § 31-27-23.

Authorization to validate bonds issued to fund the Institute for Technology Development, see § 31-29-15.

Bonds to finance dormitories and other housing facilities at junior colleges, see §§ 37-29-109 et seq.

School district bonds, see §§ 37-59-1 et seq.

Validation of general obligation bonds issued for the purpose of renovating or repairing facilities at various institutions of higher learning, the Education and Research center, and the Gulf Coast Research Laboratory, see § 37-101-321.

Validation of bonds of the Mississippi Educational Facilities Authority for Private, Nonprofit Institutions of Higher Learning, see § 37-104-27.

Validation of bonds issued for Mississippi Opportunity Loan Program Act, see § 37-145-35.

Applicability of bond validation procedures to bonds of Mississippi Hospital Equipment Financing Authority, see § 41-73-75.

Validation of bonds issued by Mississippi Home Corporation, see § 43-33-729.

Issuance of municipal securities pursuant to Water Pollution Control Revolving Fund Act, see § 49-17-89.

Applicability of this chapter to bonds issued by the Pearl River Valley Water Supply District under the Metropolitan Area Water Supply Act (§§ 51-9-189 et seq.), see § 51-9-209.

Bonds to finance improvement of surplus airport land for industrial purposes, see §§ 57-7-1 et seq.

Validation of bonds issued by county industrial development authority, see

§ 57-31-17.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from Mississippi Development Authority, see § 57-61-37.

Validation of bonds issued pursuant to the Mississippi Superconducting Super Collider Act, see § 57-67-15.

Validation of bonds authorized by the Mississippi Major Economic Impact Act, see § 57-75-15.

Validation of bonds sold to finance improvements to state harbors, see § 59-5-49.

Validation of bonds issued for improvements on state fairgrounds, see § 69-5-25.

Objections to determinations by the Municipal Gas Authority of Mississippi, concerning projects that are to be financed by the issuance of bonds, see § 77-6-17.

Validation of bonds issued by the Municipal Gas Authority of Mississippi, see § 77-6-49.

Proceedings pertaining to bond validations, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Validity.
3. Construction and application, generally.
4. Parties.
5. Notice.
6. Jurisdiction of chancery court.
7. Evidence.
8. Conclusiveness of decree validating bonds.
9. Appeals.

1. In general.

City of Hattiesburg could lawfully proceed with issuance of general obligation industrial park bonds under Chapter 886, Local and Private Laws of Mississippi, Regular Session 1984, which dispenses with the necessity for a bond issue election, except upon petition of 10 percent of the city's registered voters. Brandon v. Hattiesburg, 493 So. 2d 324, 1986 Miss. LEXIS 2532 (Miss. 1986).

Constitutionality of statute under which utility district has been organized and purports to exist may be considered at bond validation hearing, but not thereafter; on other hand, whether organization of district is lawful in sense that, in accordance with enabling legislation, all of "i's" are dotted and "t's" crossed is ordinarily regarded as collateral and may not be inquired into, provided there has been adequate opportunity to litigate question at earlier point in time. In re Validation of $7,800,000 Combined Utility System Revenue Bond, etc., 465 So. 2d 1003, 1985 Miss. LEXIS 1939 (Miss. 1985).

No inquiry, in proceeding to validate bonds, into reasonableness of leaving land out of district. Board of Sup'rs v. Holley, 141 Miss. 432, 106 So. 644, 1926 Miss. LEXIS 438 (Miss. 1926).

Powers herein conferred upon the State Bond Attorney are not judicial. Bacot v. Board of Sup'Rs., 124 Miss. 231, 86 So. 765, 1920 Miss. LEXIS 504 (Miss. 1920).

Such powers as herein conferred may be exercised by the bond attorney. Bacot v. Board of Sup'Rs., 124 Miss. 231, 86 So. 765, 1920 Miss. LEXIS 504 (Miss. 1920).

2. Validity.

In bond judgment and declaratory judgment actions by objectors against county utility district that proposed to issue revenue bonds to finance a water and sewage center, Mississippi Constitution, Art IV, § 87-90 did not sap the local and private act of its enabling power, where the local and private act furthered the same general purposes and policies as the general act, the differences between the two were primarily procedural or otherwise relatively minor, and the citizens of the political subdivision covered by the local and private act had alternatives in that they could proceed under either that act or the general law; notwithstanding that the objectors may not have been afforded reasonable advance notice of the meeting in which the board of commissioners formerly adopted resolutions concerning the project, the revenue bond did not violate the due process clause of the Mississippi Constitution. In re Validation of $7,800,000 Combined Utility System Revenue Bond, etc., 465 So. 2d 1003, 1985 Miss. LEXIS 1939 (Miss. 1985).

This chapter is held to be constitutional. Bacot v. Board of Sup'Rs., 124 Miss. 231, 86 So. 765, 1920 Miss. LEXIS 504 (Miss. 1920).

3. Construction and application, generally.

Defects in a certified transcript sent to the state bond attorney were not so severe as to preclude issuance of the bonds where the defects consisted of a failure to include notice of the special meeting in the transcript, the transcript's representation of the late signing of the meeting's minutes, the representation of the signature of a president who had resigned several months earlier, and an inaccurate statement in the bond transcript certification that "there was no litigation pending or threatened in any way involving the issuance and sale of the Bonds." Shipman v. North Panola Consol. Sch. Dist., 641 So. 2d 1106, 1994 Miss. LEXIS 372 (Miss. 1994).

In determining the validity of certain bonds which were issued by a city for the purpose of acquiring hospital facilities, the trial court properly declined to receive evidence on the collateral matter of the facility's proposed location. In re Validation of $15,000,000 Hospital Revenue Bonds etc., 361 So. 2d 44, 1978 Miss. LEXIS 2343 (Miss. 1978).

This section [Code 1942, § 4314] permits written objections only up to the time set for the validation hearing, and thereafter it was within the discretion of the chancellor to allow or overrule a motion to amend objections filed by the protestants. Ramond v. Bay St. Louis, 218 So. 2d 719, 1969 Miss. LEXIS 1613 (Miss. 1969).

Objection to a validation of bonds may not be based on the fact that the president of the board of supervisors signed the minutes on the day following that specified by law, where the day specified was a legal holiday. Gordon v. Monroe County, 244 Miss. 849, 147 So. 2d 126, 1962 Miss. LEXIS 515 (Miss. 1962).

If upon a demurrer or motion to strike, an objection is held insufficient, the objector has a right to amend at any time prior to final hearing. Mills v. Richton Municipal Separate School Dist., 236 Miss. 273, 110 So. 2d 349, 1959 Miss. LEXIS 317 (Miss. 1959).

The statute clearly requires that when objections are filed a hearing must be had within ten days, at which time any competent, relevant and material evidence may be heard. Mills v. Richton Municipal Separate School Dist., 236 Miss. 273, 110 So. 2d 349, 1959 Miss. LEXIS 317 (Miss. 1959).

In proceedings for issuance of bonds under Code of 1942, § 6370, authorizing consolidated school districts to issue bonds for improvement and repair of school buildings, allegations of objectors that signers of petition did not constitute a majority, which, if true, would render bonds void, was improperly stricken by the court, which should have heard and determined the same as required by due process. In re Savannah Special Consol. School Dist., 208 Miss. 460, 44 So. 2d 545, 1950 Miss. LEXIS 265 (Miss. 1950).

While it is true that in a proceeding to validate refunding bonds, a taxpayer may appear and object if there are no bonds to be refunded, or that none will be due or can be made to be due at the time the refunding bonds will be sold, and that upon such objection the court will be obliged to decide that issue, it is still an issue solely between the board and the taxpayers, and if the questions involved be decided in favor of the bonds proposed to be issued and the bonds are validated, the bonds as validated become of unquestionable legality as between the county, the taxpayers, and the purchasers of the refunding bonds. Love v. Humphreys County, 190 Miss. 365, 200 So. 245, 1941 Miss. LEXIS 51 (Miss. 1941).

An order by the Board of Supervisors after issuance of a refunding bond and validation thereof by proceedings in the chancery court, amending its original order for the issuance of such bonds by the inclusion of the clause "without option of prior payment" which as against the taxpayers the board had no right to make because of its disadvantageous purpose, was of no valid effect and could not be set up as a ground of objection by holders of bonds of the original issue against a subsequent issue of bonds to refund such original issue. Love v. Humphreys County, 190 Miss. 365, 200 So. 245, 1941 Miss. LEXIS 51 (Miss. 1941).

The validation proceedings for refunding bonds do not include or preclude the holders of the older bonds which are proposed to be refunded, since they have not been made parties to the refunding validation proceedings and should they elect not to surrender their bonds but to hold them and seek to collect the interest thereon, and should sue therefor, they would be met with no more than what confronts litigants generally, that is to say, the obstacle of stare decisis, but not with any such defenses as res adjudicata or the law of the case. Love v. Humphreys County, 190 Miss. 365, 200 So. 245, 1941 Miss. LEXIS 51 (Miss. 1941).

Where there has been no validation by the chancery court of a bond issue, every question which may go to the validity of the bond remains open to the taxpayer to raise an appropriate suit by him at any time when he may be called upon to contribute to the payment of the bond and his attack may question every step taken in the issuance of the original order on through the intermediate orders to and including the final order and any amendatory order. Love v. Humphreys County, 190 Miss. 365, 200 So. 245, 1941 Miss. LEXIS 51 (Miss. 1941).

Where election commissioners certified to a Board of Supervisors the essential matters necessary for the issuance of bonds of a school district, and had determined all the jurisdictional facts essential to the validity of the election, and the Board of Supervisors had found all the jurisdictional facts essential to the issuance of the bonds and had directed their issuance and validation, the pendency of a mandamus suit in the circuit court was no bar to a validation proceeding in chancery court, where no appeal was taken from the order of the Board of Supervisors to the circuit court, a mandamus suit being no substitute for the appeal provided by statute. In re Validation of Bonds, 185 Miss. 864, 188 So. 318, 1939 Miss. LEXIS 168 (Miss. 1939).

Supervisors must find as jurisdictional fact proposed funding bonds will not increase bonded debt beyond ten percent of assessed valuation, and set forth such fact in order. Lee v. Hancock County, 181 Miss. 847, 178 So. 790, 1938 Miss. LEXIS 124 (Miss. 1938).

Taxpayers may amend objections to issuance of bonds at any time prior to final hearing. Lee v. Hancock County, 181 Miss. 847, 178 So. 790, 1938 Miss. LEXIS 124 (Miss. 1938).

Clear intent of statute is that proposed bond issue shall not be permitted if there is valid objection thereto. Lee v. Hancock County, 181 Miss. 847, 178 So. 790, 1938 Miss. LEXIS 124 (Miss. 1938).

Municipality could issue bonds for purchase and maintenance of municipal waterworks payable serially over period of 25 years, and municipality's right to contract to pay for service in aid of maintenance of sinking fund for retirement of bonds was coextensive with right to issue bonds. Street v. Ripley, 173 Miss. 225, 161 So. 855, 1935 Miss. LEXIS 237 (Miss. 1935).

Validity of provision in bond ordinance providing for issuance of bonds for purchase and maintenance of municipal waterworks which obligated municipality to pay into a sinking fund a fixed sum as reasonable value of fire protection derived from given number of hydrants could be determined in validation proceedings. Street v. Ripley, 173 Miss. 225, 161 So. 855, 1935 Miss. LEXIS 237 (Miss. 1935).

Statute held to include validation proceedings for bonds issued by municipality for purchase and maintenance of municipal waterworks, notwithstanding bonds were payable solely out of revenues from such enterprise. Street v. Ripley, 173 Miss. 225, 161 So. 855, 1935 Miss. LEXIS 237 (Miss. 1935).

Municipality could issue bonds for purchase and maintenance of municipal waterworks payable serially over period of 25 years. Street v. Ripley, 173 Miss. 225, 161 So. 855, 1935 Miss. LEXIS 237 (Miss. 1935).

In bond validation proceeding, it was unnecessary that taxpayers be summoned individually to comply with due process. Love v. Mayor & Board of Aldermen, 162 Miss. 65, 138 So. 600, 1932 Miss. LEXIS 109 (Miss. 1932).

4. Parties.

A bond validation proceeding is a case in court between the issuing district and the taxpayers. Mills v. Richton Municipal Separate School Dist., 236 Miss. 273, 110 So. 2d 349, 1959 Miss. LEXIS 317 (Miss. 1959).

Validation proceedings are solely between the county as a governmental entity and the taxpayers of the county, and those who hold the bonds or other obligations which are to be paid or refunded are not necessary parties, or even proper parties. Love v. Humphreys County, 190 Miss. 365, 200 So. 245, 1941 Miss. LEXIS 51 (Miss. 1941).

Where taxpayers were given notice of proceedings for validation of bonds issued for purchase and maintenance of municipal waterworks and municipality was made party to proceedings, all necessary parties were properly joined. Street v. Ripley, 173 Miss. 225, 161 So. 855, 1935 Miss. LEXIS 237 (Miss. 1935).

5. Notice.

Publication of notice to taxpayers is process which requires their appearance if they wish to object to the validation of bonds. Mills v. Richton Municipal Separate School Dist., 236 Miss. 273, 110 So. 2d 349, 1959 Miss. LEXIS 317 (Miss. 1959).

Since bonds for consolidated school districts may be issued on petition of majority of qualified electors under Code 1942, § 6370, and no provision is made for notice to those affected so that they may have an opportunity to be heard prior to issuance, the validating act, this section [Code 1942, § 4314], must be construed so as to give to those who have had no opportunity to protest action of board the right to hearing, when they respond to notice to taxpayers in validation proceedings, otherwise state constitutional provision against deprivation of property except by due process of law is violated. In re Savannah Special Consol. School Dist., 208 Miss. 460, 44 So. 2d 545, 1950 Miss. LEXIS 265 (Miss. 1950).

The notice of validation proceedings in connection with the issuance of bonds for the construction or purchase of a municipal electric plant was not required to have affixed to it the seal of the chancery court. Mississippi Power & Light Co. v. Batesville, 187 Miss. 737, 193 So. 814, 1940 Miss. LEXIS 247 (Miss. 1940).

Validation statute held to require notice to taxpayers of proceedings to validate issuance of bonds for purchase and maintenance of municipal waterworks. Street v. Ripley, 173 Miss. 225, 161 So. 855, 1935 Miss. LEXIS 237 (Miss. 1935).

6. Jurisdiction of chancery court.

Chancery court had jurisdiction to validate notes issued for building program of agricultural high school-junior college, since it was a “school district.” Humphreys v. Hinds County Agricultural, etc., Junior College, 177 Miss. 1, 170 So. 530, 1936 Miss. LEXIS 239 (Miss. 1936); Wyatt v. Harrison-Stone-Jackson Agricultural High School-Junior College, 177 Miss. 13, 170 So. 526, 1936 Miss. LEXIS 238 (Miss. 1936).

Chancery court had jurisdiction to entertain proceedings for validation of bonds issued by municipality for purchase and maintenance of municipal waterworks, notwithstanding bonds were to be paid solely by revenue from waterworks. Street v. Ripley, 173 Miss. 225, 161 So. 855, 1935 Miss. LEXIS 237 (Miss. 1935).

Law for validating bonds held not to divest circuit court of jurisdiction of appeal after order of issuance. Pearce v. Mantachie Consol. School Dist., 134 Miss. 497, 99 So. 134, 1924 Miss. LEXIS 287 (Miss. 1924).

Although the Constitution does not specifically give the chancery court jurisdiction of matters contained in this chapter, the legislature has authority to confer such jurisdiction upon the chancery courts. Bacot v. Board of Sup’Rs., 124 Miss. 231, 86 So. 765, 1920 Miss. LEXIS 504 (Miss. 1920).

7. Evidence.

Chancellors do not have discretion in admitting and/or considering relevant evidence in the context of the statute for determining the validity of bond issues; therefore, a chancellor erred by finding that the time had passed for the presentation of evidence as to the sufficiency of the signatures on the petition. Not only was it the correct time for presenting evidence of the sufficiency of the signatures on the petition, but it was the only time. Russell v. Humphreys Cnty. Bd. of Supervisors (In re Validation of Tax Anticipation Note), 187 So. 3d 1025, 2016 Miss. LEXIS 138 (Miss. 2016).

8. Conclusiveness of decree validating bonds.

Objections made to entire record prior to chancery decree validating bonds for street improvement, held concluded by validation decree. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164, 1933 Miss. LEXIS 17 (Miss. 1933).

Decrees validating street improvement bonds held res judicata in subsequent suit by abutting owner to enjoin enforcement of assessment. West Point v. Hawkins, 164 Miss. 591, 145 So. 345, 1933 Miss. LEXIS 240 (Miss. 1933).

Bill for injunction to restrain city officials from issuing bonds could not be maintained to test constitutional questions conclusively adjudicated in validation proceedings by final decree therein entered. Love v. Mayor & Board of Aldermen, 162 Miss. 65, 138 So. 600, 1932 Miss. LEXIS 109 (Miss. 1932).

Decree of validation held res judicata as to issuance of bonds by city, payment of proceeds to purpose for which issued, and accomplishment of equalization intended by rebate, refund, and remission of taxes, yet unpaid under prior paving project. Love v. Mayor & Board of Aldermen, 162 Miss. 65, 138 So. 600, 1932 Miss. LEXIS 109 (Miss. 1932).

Judgment by default permitted by taxpayers in bond validation proceeding has same effect as any other judgment by default rendered by court of competent jurisdiction. Love v. Mayor & Board of Aldermen, 162 Miss. 65, 138 So. 600, 1932 Miss. LEXIS 109 (Miss. 1932).

Decree validating bonds of separate school district held conclusive against collateral attack on validity of order creating district. Von Zondt v. Braxton, 149 Miss. 461, 115 So. 557, 1928 Miss. LEXIS 43 (Miss. 1928).

Decree validating school bond issue in taxpayers' proceeding held res judicata as to subsequent attack by different taxpayers. Von Zondt v. Braxton, 149 Miss. 461, 115 So. 557, 1928 Miss. LEXIS 43 (Miss. 1928).

Judgment validating drainage district bonds in regular proceedings pursuant to statutory notice is conclusive on all parties. Jackson & E. R. Co. v. Burns, 148 Miss. 7, 113 So. 908, 1927 Miss. LEXIS 4 (Miss. 1927), cert. denied, 278 U.S. 562, 49 S. Ct. 27, 73 L. Ed. 506, 1928 U.S. LEXIS 339 (U.S. 1928).

9. Appeals.

In action by registered voters against county board of supervisors alleging that board violated due process right by refusing to hold election on bond issues, refusal did not rise to level of constitutional deprivation, and even if board members, as alleged, improperly eliminated signatures on plaintiffs' protest petition or viewed required number of signatures too restrictively, proper avenue for such claims was through state election procedures, not action in federal court. Thrasher v. Board of Supervisors, 765 F. Supp. 896, 1991 U.S. Dist. LEXIS 7289 (N.D. Miss. 1991).

An appeal by taxpayers to the circuit court from orders and allowances made by the board of supervisors with respect to the issuance of county funding bonds was improper where the bill of exceptions failed to set forth the facts in full and was not signed by the president of the board as the law required, and items which should have been entered and a statement as to their correctness was left to the clerk. In re Validation of $50,000 Serial Funding Bonds, 187 Miss. 512, 193 So. 449, 1940 Miss. LEXIS 231 (Miss. 1940).

An appeal to the circuit court by taxpayers from orders and allowances made by the county board of supervisors with respect to the issuance of county funding bonds was ineffective where the chancery court had acquired jurisdiction of the whole matter in a validation proceeding. In re Validation of $50,000 Serial Funding Bonds, 187 Miss. 512, 193 So. 449, 1940 Miss. LEXIS 231 (Miss. 1940).

The chancery court, having acquired jurisdiction of a proceeding or validation of county funding bonds, erred in dismissing the proceedings, in view of the fact that it had the power to pass upon the legality of the bond issue in all respects, including the various claims constituting the alleged indebtednesses, and an appeal by the taxpayers to the circuit court during the pendency of such proceeding in the chancery court was improper. In re Validation of $50,000 Serial Funding Bonds, 187 Miss. 512, 193 So. 449, 1940 Miss. LEXIS 231 (Miss. 1940).

The right of a taxpayer to prosecute appeals from orders and allowances by a board of supervisors in connection with the issuance of funding bonds to matters in which he has no pecuniary or property interest is limited. In re Validation of $50,000 Serial Funding Bonds, 187 Miss. 512, 193 So. 449, 1940 Miss. LEXIS 231 (Miss. 1940).

With respect to an appeal to the circuit court by taxpayers from orders and allowances of a board of supervisors with respect to issuance of county funding bonds, a party having a claim to be allowed or having been allowed by the board is an interested party on an appeal to the circuit court, and separate appeals from all orders must be prosecuted where an appeal has been taken, and the bill of exceptions must either be filed during the court term or meeting of the board of supervisors or within such time as the law or the board might allow for filing such bill and appeal. In re Validation of $50,000 Serial Funding Bonds, 187 Miss. 512, 193 So. 449, 1940 Miss. LEXIS 231 (Miss. 1940).

See, also, In re Validation of Bonds, 185 Miss. 864, 188 So. 318, 1939 Miss. LEXIS 168 (Miss. 1939).

OPINIONS OF THE ATTORNEY GENERAL

County is not required to go through process of validating urban renewal bonds issued pursuant to Section 43-35-1 et seq., although it may do so; if chancellor enters decree confirming and validating bonds or if supreme court on appeal enters decree confirming and validating bonds, validity of bonds is forever conclusive against county for all purposes. Haque, Dec. 9, 1992, A.G. Op. #92-0959.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 384 et seq.

Law Reviews.
Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 31-13-7. Final decree validating bonds to be forever conclusive.

If the chancellor shall enter a decree confirming and validating said bonds and there shall be no appeal by either party from said decree, or if on appeal the supreme court enters its decree confirming and validating said bonds or other written obligations, the validity of said bonds or other written obligations so issued shall be forever conclusive against the county, municipality, or district issuing same; and the validity of said bonds or other written obligations shall never be called in question in any court in this state.

HISTORY: Codes, Hemingway's 1921 Supp. § 3812c; 1930, § 314; 1942, § 4315; Laws, 1917, ch. 28; Laws, 1928, ch. 32.

Cross References — Issuance of Gulf Regional District bonds, see § 17-11-35.
Validation of bonds issued pursuant to Mississippi Regional Solid Waste Manage-

ment Authority Act, see § 17-17-337.

Validation of bonds issued to finance construction and improvement of public facilities, see § 29-17-21.

Validation of refunding bonds issued under §§ 31-15-1 through 31-15-19, see § 31-15-19, see § 31-15-19.

Validation of refunding bonds issued under §§ 31-15-21 through 31-15-27, see § 31-15-27.

Validation of notes evidencing temporary borrowings made in anticipation of issuance of state-supported debt, see § 31-17-181.

Validation of bonds issued by the Mississippi Development Bank, see § 31-25-37.

Authorization to validate bonds issued to fund the Institute for Technology Development, see § 31-29-15.

Validation of bonds issued by Mississippi Home Corporation, see § 43-33-729.

Issuance of municipal securities pursuant to Water Pollution Control Revolving Fund Act, see § 49-17-89.

Applicability of this chapter to bonds issued by the Pearl River Valley Water Supply District under the Metropolitan Area Water Supply Act (§§ 51-9-189 et seq.), see § 51-9-209.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Development Authority, see § 57-61-37.

Validation of bonds issued pursuant to the Mississippi Superconducting Super Collider Act, see § 57-67-15.

Validation of bonds authorized by the Mississippi Major Economic Impact Act, see § 57-75-15.

Objections to determinations by the Municipal Gas Authority of Mississippi, concerning projects that are to be financed by the issuance of bonds, see § 77-6-17.

Validation of bonds issued by the Municipal Gas Authority of Mississippi, see § 77-6-49.

Proceedings pertaining to bond validations, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Record.
3. Collateral attack.

1. In general.

In action by registered voters against county board of supervisors alleging that board violated due process right by refusing to hold election on bond issues, refusal did not rise to level of constitutional deprivation, and even if board members, as alleged, improperly eliminated signatures on plaintiffs' protest petition or viewed required number of signatures too restrictively, proper avenue for such claims was through state election procedures, not action in federal court. Thrasher v. Board of Supervisors, 765 F. Supp. 896, 1991 U.S. Dist. LEXIS 7289 (N.D. Miss. 1991).

An appeal involving the question whether an objector was properly required to furnish a bond for costs, in default of which the objections were dismissed without a hearing and the bonds were declared valid, is one from a final decree. Mills v. Richton Municipal Separate School Dist., 236 Miss. 273, 110 So. 2d 349, 1959 Miss. LEXIS 317 (Miss. 1959).

The question whether an objector to a bond issue was properly required to give a bond for costs as a condition of being heard in default of which the objections were dismissed and the bonds declared valid, does not become moot upon delivery of the bonds to a purchaser. Mills v. Richton Municipal Separate School Dist., 236 Miss. 273, 110 So. 2d 349, 1959 Miss. LEXIS 317 (Miss. 1959).

Objections made to entire record prior to chancery decree validating bonds for street improvement held concluded by validation decree. City of Lexington v.

Wilson's Estate, 170 Miss. 282, 151 So. 164, 1933 Miss. LEXIS 17 (Miss. 1933).

Decrees validating street improvement bonds held res judicata in subsequent suit by abutting owner to enjoin enforcement of assessment. West Point v. Hawkins, 164 Miss. 591, 145 So. 345, 1933 Miss. LEXIS 240 (Miss. 1933).

Decree of validation held res judicata as to issuance of bonds by city, payment of proceeds to purpose for which issued, and accomplishment of equalization intended by rebate, refund, and remission of taxes yet unpaid under prior paving project. Love v. Mayor & Board of Aldermen, 162 Miss. 65, 138 So. 600, 1932 Miss. LEXIS 109 (Miss. 1932).

Judgment by default permitted by taxpayers in bond validation proceeding has same effect as any other judgment by default rendered by court of competent jurisdiction. Love v. Mayor & Board of Aldermen, 162 Miss. 65, 138 So. 600, 1932 Miss. LEXIS 109 (Miss. 1932).

A judgment validating drainage district bonds in regular proceedings pursuant to statutory notice is conclusive on all parties. Jackson & E. R. Co. v. Burns, 148 Miss. 7, 113 So. 908, 1927 Miss. LEXIS 4 (Miss. 1927), cert. denied, 278 U.S. 562, 49 S. Ct. 27, 73 L. Ed. 506, 1928 U.S. LEXIS 339 (U.S. 1928).

No inquiry, in proceedings to validate bonds, into reasonableness of leaving certain land out of district. Board of Sup'rs v. Holley, 141 Miss. 432, 106 So. 644, 1926 Miss. LEXIS 438 (Miss. 1926).

This chapter is not intended to deprive the circuit court of jurisdiction of appeals taken from the order of the board of supervisors but contemplates that the validating proceedings may be had after the proper board or court has entered its decree or order of issuance and no appeal has been taken therefrom. Pearce v. Mantachie Consol. School Dist., 134 Miss. 497, 99 So. 134, 1924 Miss. LEXIS 287 (Miss. 1924).

Where the order of the board of supervisors in attempting to establish a road district includes therein more territory than is contained in the petition, the order is void and may be attacked in a validation proceeding. Bryant v. Board of Sup'rs, 133 Miss. 714, 98 So. 148, 1923 Miss. LEXIS 180 (Miss. 1923).

Bonds issued by a county, municipality or district although without authority, validated under this chapter are binding and valid. Parker v. Board of Sup'rs, 125 Miss. 617, 88 So. 172, 1921 Miss. LEXIS 149 (Miss. 1921).

2. Record.

The board cannot present one record to the taxpayers for the validation of bonds and then present to them a more burdensome or less advantageous record when they are called on to pay, and since the rights of bondholders are based on what the board has validly done, the bondholders cannot insist on any record which, as against the taxpayers, the board had no right to make. Love v. Humphreys County, 190 Miss. 365, 200 So. 245, 1941 Miss. LEXIS 51 (Miss. 1941).

When there has been a validation decree that decree forecloses every question which could have been raised by any taxpayer against the legality of the issue; wherefore, it follows that when the board presents to the taxpayers a certified record for validation and gives them notice to come into court if they have any objection to what the record shows and proposes, that record must remain unchanged in all particulars which otherwise would operate adversely to the interest of the taxpayers. Love v. Humphreys County, 190 Miss. 365, 200 So. 245, 1941 Miss. LEXIS 51 (Miss. 1941).

Judgment under record showing jurisdictional facts, proceedings creating drainage districts and legal assessments of benefits and damages constitute res adjudicata. Jackson & E. R. Co. v. Burns, 148 Miss. 7, 113 So. 908, 1927 Miss. LEXIS 4 (Miss. 1927), cert. denied, 278 U.S. 562, 49 S. Ct. 27, 73 L. Ed. 506, 1928 U.S. LEXIS 339 (U.S. 1928).

Where the record before the board shows the jurisdictional facts, in so far as matters of fact are concerned, in a proceeding to validate road bonds, the validity of the creation of the road district cannot be inquired into. Borroum v. Purdy Road Dist., 131 Miss. 778, 95 So. 677, 1923 Miss. LEXIS 216 (Miss. 1923).

3. Collateral attack.

Subsequent to bond validation decree becoming final, taxpayer may not be heard to complain of legality or constitutionality of facet of bond issue or project to be funded which could have been presented and fully heard at bond validation hearing; however, that which could not have been presented (because of limited scope of hearing or whatever) may not be precluded from subsequent litigation consistent with due process. In re Validation of $7,800,000 Combined Utility System Revenue Bond, etc., 465 So. 2d 1003, 1985 Miss. LEXIS 1939 (Miss. 1985).

After a decree of validation, this statute [Code 1942, § 4315] forecloses all objections that could have been urged before the chancellor at the hearing of the proceedings as to the validity of the bonds, where he had jurisdiction of the subject matter and the parties, including the objection that no notice was given to the taxpayers in regard to the board's intention to issue the same; nor can the decree be collaterally attacked where, instead of appearing to be void on its face, it adjudicates all of the facts necessary to show its validity, and was rendered by a court of competent jurisdiction. Town of Decatur v. Brogan, 184 Miss. 402, 185 So. 809, 1939 Miss. LEXIS 46 (Miss. 1939).

Bill for injunction to restrain city officials from issuing bonds could not be maintained to test constitutional questions conclusively adjudicated in validation proceedings by final decree therein entered. Love v. Mayor & Board of Aldermen, 162 Miss. 65, 138 So. 600, 1932 Miss. LEXIS 109 (Miss. 1932).

OPINIONS OF THE ATTORNEY GENERAL

As a general proposition, when there has been no official action approving in advance additional work by a contractor, a governing authority is not permitted to pay for the additional work; however, if a contract is to be performed and paid upon a "unit price," a governing authority may find, consistent with fact, and encompass such findings in an order spread upon its minutes, that a proposed change order is necessary or incidental to the completion of the work as originally bid, is commercially reasonable, is not made to circumvent the public purchasing statutes, and that the increase in costs is reasonable, and may thereafter approve the change order even after the work has been performed. Honea, April 9, 1999, A.G. Op. #99-0160.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations § 397.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 31-13-9. Validated bonds to be so stamped; use of facsimile.

Whenever any bonds are validated under the provisions of this chapter, the clerk or other proper officer of the county, municipality, or district issuing same shall stamp or write on each of said bonds over his signature and the seal of the issuer the words "validated and confirmed by decree of the chancery (or supreme) court," together with the date of the rendition of the final decree validating same, which entry shall be taken as evidence of the validation of said bonds in any court in this state. If the resolution authorizing the issuance of the bonds shall so provide, such signature and seal under this section may be a facsimile.

HISTORY: Codes, Hemingway's 1921 Supp. § 3812d; 1930, § 316; 1942, § 4317; Laws, 1917, ch. 28; Laws, 1928, ch. 32; Laws, 1978, ch. 327, § 1; Laws, 1985, ch. 427, eff from and after July 1, 1985.

Cross References — Validation of bonds issued pursuant to Mississippi Regional Solid Waste Management Authority Act, see § 17-17-337.

Validation of bonds issued to finance construction and improvement of public facilities, see § 29-17-21.

Validation of refunding bonds issued under §§ 31-15-1 through 31-15-19, see § 31-15-19, see § 31-15-19.

Validation of refunding bonds issued under §§ 31-15-21 through 31-15-27, see § 31-15-27.

Validation of notes evidencing temporary borrowings made in anticipation of issuance of state-supported debt, see § 31-17-181.

Validation of bonds issued by the Mississippi Development Bank, see § 31-25-37.

Authorization to validate bonds issued to fund the Institute for Technology Development, see § 31-29-15.

Validation of bonds issued by Mississippi Home Corporation, see § 43-33-729.

Issuance of municipal securities pursuant to Water Pollution Control Revolving Fund Act, see § 49-17-89.

Applicability of this chapter to bonds issued by the Pearl River Valley Water Supply District under the Metropolitan Area Water Supply Act (§§ 51-9-189 et seq.), see § 51-9-209.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Development Authority, see § 57-61-37.

Validation of bonds issued pursuant to the Mississippi Superconducting Super Collider Act, see § 57-67-15.

Validation of bonds authorized by the Mississippi Major Economic Impact Act, see § 57-75-15.

Objections to determinations by the Municipal Gas Authority of Mississippi, concerning projects that are to be financed by the issuance of bonds, see § 77-6-17.

Validation of bonds issued by the Municipal Gas Authority of Mississippi, see § 77-6-49.

Proceedings pertaining to bond validations, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 31-13-11. Court costs and bond attorney's fee and expenses.

The court costs in all such cases shall be paid by the county, municipality, or district proposing to issue said bonds or other written obligations, and in addition to such costs it shall also pay to the bond attorney a fee of not more than one-tenth of one percent ($^{1}/_{10}$ of 1%), provided said fee shall not be less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), of the amount of the bonds or other obligations issued or proposed to be issued. The payment of this fee shall be full compensation for all legal services rendered in connection with the issuance of said bonds, except that when the state's bond attorney attends a hearing of objection to the validation of said bonds, his actual and necessary expenses and a reasonable rate of compensation for attending the said hearing as required by this chapter shall be taxed as a part of the costs of the validation proceedings, upon approval by the clerk or chancellor of an itemized account of such expenses and time expended. If objection is filed to the validation of said bonds, then in that event the taxation of court costs, including expenses and a reasonable rate of compensation for the bond attorney, shall be discretionary with the chancellor, as in other cases in the chancery court, against the issuing board or district, or the objector or objectors, or apportioned as the chancellor may deem proper.

HISTORY: Codes, Hemingway's 1921 Supp. § 3812e; 1930, § 317; 1942, § 4318; Laws, 1917, ch. 28; Laws, 1928, ch. 32; Laws, 1968, ch. 370, § 1; Laws, 1979, ch. 371; Laws, 1983, ch. 373, eff from and after passage (approved March 21, 1983).

Cross References — Validation of bonds issued pursuant to Mississippi Regional Solid Waste Management Authority Act, see § 17-17-337.

Validation of bonds issued to finance construction and improvement of public facilities, see § 29-17-21.

Validation of refunding bonds issued under §§ 31-15-1 through 31-15-19, see § 31-15-19, see § 31-15-19.

Validation of refunding bonds issued under §§ 31-15-21 through 31-15-27, see § 31-15-27.

Validation of notes evidencing temporary borrowings made in anticipation of issuance of state-supported debt, see § 31-17-181.

Validation of bonds issued by the Mississippi Development Bank, see § 31-25-37.

Authorization to validate bonds issued to fund the Institute for Technology Development, see § 31-29-15.

Validation of bonds issued by Mississippi Home Corporation, see § 43-33-729.

Issuance of municipal securities pursuant to Water Pollution Control Revolving Fund Act, see § 49-17-89.

Applicability of this chapter to bonds issued by the Pearl River Water Supply District under the Metropolitan Area Water Supply Act (§§ 51-9-189 et seq.), see § 51-9-209.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Development Authority, see § 57-61-37.

Validation of bonds authorized by the Mississippi Major Economic Impact Act, see § 57-75-15.

Objections to determinations by the Municipal Gas Authority of Mississippi, concerning projects that are to be financed by the issuance of bonds, see § 77-6-17.

Proceedings pertaining to bond validations, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

An objector may not be required to furnish a bond for costs as a condition of being heard, at least in a prohibitive amount. Mills v. Richton Municipal Separate School Dist., 236 Miss. 273, 110 So. 2d 349, 1959 Miss. LEXIS 317 (Miss. 1959).

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations § 401.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

CHAPTER 15.

REFUNDING BONDS

Sec.	
31-15-1.	Short title.
31-15-3.	Definitions.
31-15-5.	Election not required.
31-15-7.	Interest and form.
31-15-9.	Sale and redemption; acceptance of bonds.
31-15-11.	General obligations.
31-15-13.	Time limit.
31-15-15.	Invalid bonds.
31-15-17.	Additional method.
31-15-19.	Validation.
31-15-21.	Refund of bonds not based on ad valorem tax.
31-15-23.	Interest and form.
31-15-25.	Security.
31-15-27.	Validation.

§ 31-15-1. Short title.

Sections 31-15-1 through 31-15-19 may be cited as the "General Refunding Law of 1934."

HISTORY: Codes, 1942, § 4358; Laws, 1934, ch. 143.

Cross References — Inapplicability of debt limitations to refunding bonds, see § 31-15-9.

Refunding of bonded indebtedness for maintenance of sea walls or road protection structures, see §§ 65-33-61 et seq.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 215 et seq.

CJS.

81A C.J.S., States §§ 454, 455.

§ 31-15-3. Definitions.

Whenever used in Sections 31-15-1 through 31-15-19, the words "political subdivision" shall be deemed as including any county, city, town, or village, whether operating under the code chapter, a special charter, or the commission form of government; and any supervisors district, road district, municipal separate school district, rural separate school district, consolidated school district, line separate school district, or school district of any other form.

The words "governing authority", wherever used in the aforesaid sections, shall be understood as referring to the following: for counties, supervisors districts, road districts, school districts (other than municipal separate school districts), the board of supervisors of the county; for cities, towns, or villages operating under the code, the board of mayor and aldermen thereof; for cities, towns, or villages operating under special charters, the legislative body thereof created by such charters; for cities, towns, or villages operating under the commission form of government, the council or commission thereof; for municipal separate school districts, the governing authority of the city, town, or village within such district.

HISTORY: Codes, 1942, § 4359; Laws, 1934, ch. 143.

Cross References — Issuance of refunding bonds by drainage districts, see § 51-33-39.

§ 31-15-5. Election not required.

(1) The governing authority of any political subdivision may, without an election on the question of the issuance thereof, issue the bonds of such subdivision for the purpose of refunding any bonded indebtedness of such subdivision now or hereafter outstanding, whether such bonded indebtedness shall at the time of such refunding be due or to mature in the future, and regardless of whether the issuance of such refunding bonds shall create a total bonded indebtedness of such subdivision in excess of the then existing statutory limitation of debt.

(2) The board of supervisors of any county may issue the bonds of any county, consolidated school district, rural separate school district or separate road district, for the purpose of refunding the outstanding bonded indebtedness of any such county or district when the same shall mature, whether now due or to become due in the future without notice and without an election on the question of the issuance of same, regardless of whether or not the issuance of such bonds shall create a total bonded indebtedness in excess of the then existing statutory limitation of debt.

(3) Such bonds may be issued in sufficient amount to pay and retire any of the then outstanding bonds, whether matured or to mature in the future, together with interest thereon to the date of the refunding bonds or to such prior date as the governing authority may determine; and such power to refund such bonds and interest may be exercised whenever funds available from taxes are not sufficient to pay such outstanding bonds and the interest thereon whenever they may mature.

HISTORY: Codes, Hemingway's 1921 Supp. § 6662j; 1930, § 5986; 1942, §§ 4346, 4360; Laws, 1920, ch. 207; Laws, 1932, ch. 167; Laws, 1934, ch. 143.

Cross References — Purposes for which board of supervisors may issue bonds, see § 19-9-1.

Debt limitation on county bonds, see § 19-9-5.

Limitations on bonded indebtedness of municipalities, see § 21-33-303.

Refunding of municipal special assessment bonds, see § 21-41-49.

Validation of refunding bonds, see § 31-15-19.

Limitation on bonded indebtedness of school districts, see § 37-59-5.

Borrowing for certain capital improvements as being outside school district's debt limitation, see § 37-59-115.

JUDICIAL DECISIONS

1. In general.

Although this section [Code 1942, § 4360] does not in express terms make the issuance of refunding bonds mandatory, it is mandatory where it applies, as where a municipality has an outstanding bonded indebtedness for which it has no funds to discharge either the principal or interest and some of the interest can be saved by issuing refunding bonds; under such conditions it is mandatory on the municipal authority to refund the bonds and they are authorized to incur the necessary expenses, including reasonable attorney's fees, to do so. City of Louisville v. Chambers, 190 Miss. 833, 1 So. 2d 771, 1941 Miss. LEXIS 95 (Miss. 1941).

It is not necessary that the board of supervisors of a county should adjudicate that the funds available from taxes would not be sufficient to pay the next maturing bonds and all accrued interest, nor that any bond was then in default, as a condition precedent to its right to issue refunding bonds. In re Validation of Road Protection Bonds, 184 Miss. 727, 184 So. 815, 1938 Miss. LEXIS 314 (Miss. 1938); Love v. Humphreys County, 190 Miss. 365, 200 So. 245, 1941 Miss. LEXIS 51 (Miss. 1941).

Notwithstanding the contention that the board of supervisors of a county had unlawfully transferred a sum of money from the road protection bond fund to another county fund thereby bringing about a deficit in the funds available for meeting the amount due on the original bond issue, and that the taxpayers were entitled to have the money returned to the road protection bond fund, the board of supervisors would nevertheless have been authorized to issue refunding bonds in order to avoid default being made as to future instalments due. In re Validation of Road Protection Bonds, 184 Miss. 727, 184 So. 815, 1938 Miss. LEXIS 314 (Miss. 1938).

Proposed county bonds to take up outstanding county obligations were "funding" and not "refunding" bonds, and therefore limited to ten per cent of assessed value of taxable property of county. Lee v. Hancock County, 181 Miss. 847, 178 So. 790, 1938 Miss. LEXIS 124 (Miss. 1938).

"Refunding bond" is a bond issued to pay off an older issue; to "refund a debt" meaning to fund it again or anew; the word "fund" in this connection meaning to convert into a more or less permanent debt bearing regular interest. Lee v. Hancock County, 181 Miss. 847, 178 So. 790, 1938 Miss. LEXIS 124 (Miss. 1938).

Supervisors must find as jurisdictional fact proposed funding bonds will not increase bonded debt beyond ten percent of assessed valuation, and set forth such fact in order. Lee v. Hancock County, 181 Miss. 847, 178 So. 790, 1938 Miss. LEXIS 124 (Miss. 1938).

Clear intent of statute is that proposed bond issue shall not be permitted if there is valid objection thereto. Lee v. Hancock County, 181 Miss. 847, 178 So. 790, 1938 Miss. LEXIS 124 (Miss. 1938).

RESEARCH REFERENCES

ALR.

Presumptions and burden of proof as to violation of or compliance with public debt limitation. 16 A.L.R.2d 515.

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 50 et seq.

CJS.

81A C.J.S., States §§ 437, 443-445.

§ 31-15-7. Interest and form.

Such refunding bonds shall bear such rate or rates of interest as may be determined by the governing body, not exceeding, however, six percent (6%) per annum payable semi-annually; shall be in such denomination or denominations and form as may be determined by resolution or order of the governing authority; and shall be executed in behalf of the subdivision by such officer or officers thereof as may be determined in such resolution or order. The interest to accrue on such refunding bonds shall be represented by coupons to be attached thereto, which may be executed by the facsimile signature of such officer or officers. All such bonds shall be made to mature serially, beginning not more than five (5) years and running not longer than thirty (30) years after their date, with not less than one percent (1%) of the total issue to mature each year during the first six (6) years, beginning in the fifth year, after the date of such bonds; not less than three percent (3%) of the said total issue to mature annually during the next succeeding ten-year (10-year) period of the life of such bonds; and not less than five percent (5%) of said total issue to mature annually during the next succeeding ten-year (10-year) period of the life of the bonds.

HISTORY: Codes, 1942, § 4361; Laws, 1934, ch. 143; Laws, 1936, ch. 279; Laws, 1938, Ex. ch. 74.

JUDICIAL DECISIONS

1. In general.

Refunding bonds of a county were not invalid because they matured serially five years from the date of their issuance, since the words of the statute "after this date" were intended to read "after their date," particularly in view of further language of the statute specifying what percent of the total issues should mature the first six years, "beginning in the fifth year after the date of such bonds," and in view of the fact that if the statute had intended to require all refunded bonds issued thereunder to begin maturing in not more than five years after its passage, instead of five years from the date of their issuance, then it would necessarily follow that bonds issued immediately prior to the expiration of five years from the passage of the statute would mature before ample opportunity would be afforded the governing authority to dispose of it. In re Validation of Road Protection Bonds, 184 Miss. 727, 184 So. 815, 1938 Miss. LEXIS 314 (Miss. 1938).

RESEARCH REFERENCES

CJS.

81A C.J.S., States § 438.

§ 31-15-9. Sale and redemption; acceptance of bonds.

The resolution or order providing for the issuance of such bonds may reserve unto the governing authority the right to call in, pay, and redeem such bonds in the inverse order of their numbers and maturities, prior to the maturity date or dates thereof on any interest payment date. Whenever it is desired to exercise the aforesaid right, if reserved in such resolution or order, the governing authority shall cause written notice thereof to be delivered to the bank or office at which such bonds are payable. Such notice shall be so delivered not less than thirty days prior to the interest payment date designated for the redemption of such bonds, after which date so designated, no further interest shall accrue on the bonds so called for redemption. Such refunding bonds may be sold for not less than par and accrued interest, or may be exchanged at par for bonds and interest coupons to be refunded thereby.

The board of supervisors may accept county bonds, consolidated school district bonds, rural separate school district bonds or separate road district bonds, as the case may be, at not more than par and interest accruing thereon at the rate fixed in the bonds to be refunded in exchange for said refunding county bonds, consolidated school district bonds, rural separate school district bonds or separate road district bonds, as the case may be. In accepting any bond in exchange for, or in payment of, any such refunding bond, no bond shall be accepted in such exchange or payment that is secured by the property of a smaller or different district, or other subdivision, than that securing the refunding bonds so issued.

HISTORY: Codes, Hemingway's 1921 Supp. § 6662j; 1930, § 5986; 1942, §§ 4346, 4361; Laws, 1920, ch. 207; Laws, 1932, ch. 167; Laws, 1934, ch. 143; Laws, 1936, ch. 279; Laws, 1938, Ex. ch. 74.

JUDICIAL DECISIONS

1. In general.

Refunding bonds of a county were not invalid because they matured serially five years from the date of their issuance, since the words of the statute "after this date" were intended to read "after their date," particularly in view of further language of the statute specifying what percent of the total issues should mature the first six years, "beginning in the fifth year after the date of such bonds," and in view of the fact that if the statute had intended to require all refunded bonds issued thereunder to begin maturing in not more than five years after its passage, instead of five years from the date of their issuance, then it would necessarily follow that bonds issued immediately prior to the expiration of five years from the passage of the statute would mature before ample opportunity would be afforded the governing authority to dispose of it. In re Validation of Road Protection Bonds, 184 Miss. 727, 184 So. 815, 1938 Miss. LEXIS 314 (Miss. 1938).

Proposed county bonds to take up outstanding county obligations were "funding" and not "refunding" bonds, and therefore limited to ten percent. of assessed value of taxable property of county. Lee v. Hancock County, 181 Miss. 847, 178 So. 790, 1938 Miss. LEXIS 124 (Miss. 1938).

"Refunding bond" is a bond issued to pay off an older issue; to "refund a debt" meaning to fund it again or anew; the word "fund" in this connection meaning to convert into a more or less permanent debt bearing regular interest. Lee v. Hancock County, 181 Miss. 847, 178 So. 790, 1938 Miss. LEXIS 124 (Miss. 1938).

Supervisors must find as jurisdictional fact proposed funding bonds will not increase bonded debt beyond ten percent of assessed valuation, and set forth such fact in order. Lee v. Hancock County, 181 Miss. 847, 178 So. 790, 1938 Miss. LEXIS 124 (Miss. 1938).

Clear intent of statute is that proposed bond issue shall not be permitted if there is valid objection thereto. Lee v. Hancock County, 181 Miss. 847, 178 So. 790, 1938 Miss. LEXIS 124 (Miss. 1938).

RESEARCH REFERENCES

ALR.
Presumptions and burden of proof as to violation of or compliance with public debt limitation. 16 A.L.R.2d 515.

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 215 et seq.

CJS.
81A C.J.S., States §§ 449, 450.

§ 31-15-11. General obligations.

All refunding bonds issued under the provisions of Sections 31-15-1 through 31-15-19 shall be general obligations of the political subdivisions issuing same, and the governing authority of such subdivision shall annually levy a tax upon all taxable property therein sufficient to pay the principal of and the interest on such bonds as the same matures and accrues. The full faith, credit, and resources of such subdivision shall be and are hereby irrevocably pledged to the payment of such bonds, both as to principal and interest.

HISTORY: Codes, 1942, § 4362; Laws, 1934, ch. 143.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 347 et seq.

§ 31-15-13. Time limit.

The governing authority may, at any time or times, exercise the powers granted by Sections 31-15-1 through 31-15-19 in the refunding of any or all of the bonds and interest coupons of any one (1) or more of the issues of bonds then outstanding. No refunding bonds shall be issued at any time after three (3) years from the date of the resolution or order providing therefor.

HISTORY: Codes, 1942, § 4363; Laws, 1934, ch. 143.

JUDICIAL DECISIONS

1. In general.
There is nothing in the statute indicating a purpose on the part of the legislature to limit the period of its operation as a law, or the time within which outstanding bonded indebtedness may be refunded under any of its terms and provisions, where the funds available from taxes are not sufficient to pay such indebtedness when due. In re Validation of Road Protection Bonds, 184 Miss. 727, 184 So. 815, 1938 Miss. LEXIS 314 (Miss. 1938).

§ 31-15-15. Invalid bonds.

In the event that any of the refunding bonds authorized to be issued under Sections 31-15-1 through 31-15-19 should be declared by any court of competent jurisdiction to be invalid, the holder or holders thereof shall be subrogated to all of the rights, remedies, and privileges had and possessed by the holder or holders of the bonds or interest coupons refunded thereby.

HISTORY: Codes, 1942, § 4364; Laws, 1934, ch. 143.

§ 31-15-17. Additional method.

Sections 31-15-1 through 31-15-19, without reference to any other statute, shall be deemed full and complete authority for the issuance of refunding bonds by political subdivisions of the state, and shall be construed as an additional and alternative method therefor. None of the present restrictions, requirements, conditions, or limitations of law applicable to the issuance of bonds by political subdivisions of this state shall apply to the issuance and sale or exchange of bonds under the aforesaid sections, and no proceedings shall be required for the issuance of such bonds other than those provided for and required herein. All powers necessary to be exercised by the governing authority of any such political subdivision in order to carry out the provisions of said sections are hereby conferred.

HISTORY: Codes, 1942, § 4365; Laws, 1934, ch. 143.

Cross References — Limitation on county's bonded indebtedness, see § 19-9-5.

Limitation on bonded indebtedness of municipality, see § 21-33-303.

Limitation on amounts which may be borrowed in anticipation of taxes, see § 21-33-325.

Exemption of bonds to be paid by special assessments from general debt limitations of municipalities, see § 21-41-47.

Exemption of refunding bonds from limitation on bonded indebtedness of county or consolidated or rural separate school district or separate road district, see § 31-15-9.

Limitation on indebtedness of school districts, see § 37-59-5.

Limitation on amounts of money to be borrowed in anticipation of taxes by school districts, see § 37-59-37.

Limitation of bonded indebtedness of urban flood and drainage control districts, see § 51-35-323.

Limitation on county's bonded indebtedness for recreational facilities, see § 55-9-3.

Exemption of harbor development bonds from debt limitations, see § 59-7-317.

Exemption of bridge revenue bonds from debt limitations, see § 65-25-41.

JUDICIAL DECISIONS

1. In general.

The words "all powers necessary" include the authorization not only of the means and measures absolutely necessary, but of all reasonably appropriate and useful means to the end to be accomplished and which, in the judgment of the board will most advantageously effect it. Causey v. Jones, 193 Miss. 495, 10 So. 2d 356, 1942 Miss. LEXIS 141 (Miss. 1942).

Supervisors of a county, which was in default in the payment of bonds, were empowered to employ a qualified firm to aid the board in devising and carrying out a refunding program for the rehabilitation of the county's financial structure, and appropriations of county funds to reimburse the firm for its services was an object authorized by law. Causey v. Jones, 193 Miss. 495, 10 So. 2d 356, 1942 Miss. LEXIS 141 (Miss. 1942).

§ 31-15-19. Validation.

Any bonds issued under the provisions of Sections 31-15-1 through 31-15-19 may be validated under Sections 31-13-1 through 31-13-11.

HISTORY: Codes, 1942, § 4366; Laws, 1934, ch. 143.

Cross References — Validation of bonds issued under §§ 31-15-21 through 31-15-27, see § 31-15-27.

§ 31-15-21. Refund of bonds not based on ad valorem tax.

Any bonds heretofore or hereafter issued under authority of Sections 21-27-11, 21-27-23, 21-27-41 through 21-27-43, or revenue bonds payable from funds other than the proceeds of ad valorem taxes heretofore or hereafter issued under authority of any other law of the State of Mississippi may be refunded upon surrender, whether such bonds are due, optional, or not yet matured. Such refunding bonds shall be negotiable, shall be authorized by resolution adopted by the board or governing body which shall have authorized the bonds that are being refunded, and may either be delivered in exchange for the bonds to be refunded or sold at not less than par and the proceeds applied to the retirement of such bonds.

HISTORY: Codes, 1942, § 4367; Laws, 1940, ch. 281.

§ 31-15-23. Interest and form.

Such refunding bonds may bear interest at such rate or rates not exceeding that allowed in Section 75-17-103, shall mature at such time or times not exceeding thirty (30) years from their date, may be subject to redemption at such times and at such premiums, and shall be in such form and in all other respects be of such details and issued under such conditions as may be determined in the resolution authorizing the bonds.

HISTORY: Codes, 1942, § 4368; Laws, 1940, ch. 281; Laws, 1987, ch. 407, eff from and after passage (approved March 20, 1987).

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 376 et seq.

CJS.

81A C.J.S., States § 438.

§ 31-15-25. Security.

Such refunding bonds shall be payable from the same sources of revenue and so far as possible shall be secured in the same manner and by the same covenants and agreements as were the bonds refunded. All provisions of the law under which the bonds refunded were issued, which provide for the security of such bonds and the requirements for fixing rates sufficient to operate the project acquired or improved and to pay principal of and interest on the bonds, shall remain in effect and shall be fully applicable to the refunding bonds issued hereunder. In no event shall taxes be levied for the payment of such bonds, and they shall recite on their face that they are payable only from revenues.

HISTORY: Codes, 1942, § 4369; Laws, 1940, ch. 281.

§ 31-15-27. Validation.

Refunding bonds issued under Sections 31-15-21 through 31-15-27 may be validated in the chancery court pursuant to the provisions of Sections 31-13-1 through 31-13-11, and shall be exempt from all state, county, municipal, and other taxation under the laws of Mississippi.

HISTORY: Codes, 1942, § 4370; Laws, 1940, ch. 281.

Cross References — Validation of bonds issued under §§ 31-15-1 through 31-15-19, see § 31-15-19.

CHAPTER 17.

STATE BONDS; RETIREMENT OF BONDS

State Bond Commission. 31-17-1
State Bond Retirement Commission. 31-17-11
Retirement of Bonds. 31-17-21
Fiscal Advisor and Fiscal Advisory Council. [Repealed]. 31-17-71
Highway Funding. 31-17-75
State Bond Commission; Notes to Maintain Working Balance in General Fund. 31-17-101
Temporary Borrowings in Anticipation of Issuance of State-Supported Debt. 31-17-151

STATE BOND COMMISSION

Sec.
31-17-1. Composition of State Bond Commission.
31-17-3. General powers of State Bond Commission.
31-17-5. Requests for proposals for bond counsel and certain information about bond counsel once selected to be posted on Department of Finance and Administration and State Treasurer websites.

§ 31-17-1. Composition of State Bond Commission.

The State Bond Commission shall be composed of the Governor, the Attorney General, and the State Treasurer.

HISTORY: Codes, 1942, § 4380; Laws, 1936, ch. 196.

Cross References — Commission's authority to borrow funds for flood relief upon request by State Commission of Budget and Accounting, see § 27-107-165.

Actions of members of the State Bond Commission as the Educational Facilities Authority for Private, Nonprofit Institutions of Higher Learning, see § 37-104-5.

OPINIONS OF THE ATTORNEY GENERAL

The Board of Trustees of State Institutions of Higher Learning and the various universities under its management and control are within the definition of "agency" as set forth in subsection (a) of this section, and are subject to the requirements of § 31-7-13 and other statutes governing public construction. Guice, Oct. 17, 2003, A.G. Op. 03-0537.

Sections 31-17-1 and 31-17-13 authorize repairs and restoration of a public building on an emergency basis without complying with the advertisement requirements contained in Section 31-7-13. These provisions do not authorize the renovation and retrofitting of a newly acquired building without complying with such advertising requirements. Waller, June 9, 2006, A.G. Op. 06-0227.

§ 31-17-3. General powers of State Bond Commission.

The State Bond Commission, with the approval and consent of the State Auditor of Public Accounts and the chairman of the State Tax Commission, is hereby authorized to purchase outstanding bonds of the State of Mississippi, retire such bonds, and pay the purchase price thereof out of any surplus remaining in the state treasury at the end of any fiscal year, all in accord with the provisions of Sections 31-17-21 through 31-17-25. The State Bond Commission, with the consent and approval of the state auditor of public accounts and the chairman of the State Tax Commission, shall determine the amount of bonds to be purchased, the maximum price to be paid therefor not to exceed par and accrued interest, and the date upon which it will receive proposals to purchase such bonds, all in accord with the provisions of Sections 31-17-21 through 31-17-25.

HISTORY: Codes, 1942, § 4380; Laws, 1936, ch. 196.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

Cross References — State bond retirement revolving fund, see § 31-17-27.

Registration of bonds with Executive Director of the Department of Finance and Administration, see § 31-19-17.

Authority of commission to borrow funds for Institute for Technology Development upon approval by Mississippi Development Authority of resolution by board of directors of the institute, see § 31-29-5.

State bond commission's function in regard to development of harbors, see §§ 59-5-41 et seq.

State Bond Commission's authority with respect to general obligation bonds providing funds for Emerging Crops Fund under Mississippi Farm Reform Act, see § 69-2-19.

State Bond Commission's selection of newspaper or journal for purposes of giving notice of bond sales under Mississippi Farm Reform Act, see § 69-2-27.

Role of officers of State Bond Commission in execution of bonds issued under Mississippi Farm Reform Act, see § 69-2-29.

State Bond Commission's transfer of bond proceeds to Emerging Crops Fund under Mississippi Farm Reform Act, see § 69-2-31.

OPINIONS OF THE ATTORNEY GENERAL

In negotiating changes to the requirements as stated in the request for proposals (RFP) for garbage collection and disposal services where the specifications in the RFP required a bond, the county must either keep that as a requirement, or re-advertise for proposals. Hollimon, Sept. 16, 2002, A.G. Op. #02-0500.

In a proposed contract for garbage collection and disposal services where the contractor will be handling all billing, resulting in no direct expenditures by the county, and none in excess of $ 50,000.00, § 31-7-3(r) would apply because, regardless of whether the county is responsible for billing or the contractor assumes that responsibility, the public entity is required to advertise for proposals. Hollimon, Sept. 16, 2002, A.G. Op. #02-0500.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 339 et seq.

§ 31-17-5. Requests for proposals for bond counsel and certain information about bond counsel once selected to be posted on Department of Finance and Administration and State Treasurer websites.

(1) When a request for proposals for bond counsel for a general obligation or revenue bond issue is issued on behalf of the State Bond Commission, the request for proposal shall be posted on the website of the Department of Finance and Administration and the State Treasurer.

(2) Once bond counsel is selected for a bond issue, the name and address of the counsel selected shall be posted on the website of the Department of Finance and Administration and the State Treasurer. The amount of any payments made to bond counsel for his or her services as bond counsel shall be posted on the website of the Department of Finance and Administration and the State Treasurer.

HISTORY: Laws, 2013, ch. 569, § 42, eff from and after passage (approved April 25, 2013).

STATE BOND RETIREMENT COMMISSION

Sec.
31-17-11. Composition of state bond retirement commission.
31-17-13. General duties of state bond retirement commission.

§ 31-17-11. Composition of state bond retirement commission.

There is hereby created the state bond retirement commission which shall be composed of the Governor, the Attorney General, and the State Treasurer. The Governor shall be the chairman of the commission, and the Attorney General shall be the secretary thereof.

HISTORY: Laws, 1944, ch. 140, § 1, eff from and after passage (approved Feb. 4, 1944).

§ 31-17-13. General duties of state bond retirement commission.

It shall be the duty of the state bond retirement commission to administer the state bond retirement revolving fund provided for in Section 31-17-27, and to perform such other duties as may be prescribed in Sections 31-17-27 through 31-17-43.

HISTORY: Laws, 1944, ch. 140, § 1, eff from and after passage (approved Feb. 4, 1944).

Cross References — Functions of State Bond Commission, see § 31-17-3.

OPINIONS OF THE ATTORNEY GENERAL

Reading Section 17-17-5 and Section 31-17-13 in pari materia, the governing authority of a municipality may not exercise an option to extend a garbage collection or transportation contract beyond a six year term without advertising for proposals as set out in the latter statute. Pope, December 23, 1998, A.G. Op. #98-0755.

The Board of Trustees of State Institutions of Higher Learning and the various universities under its management and control are within the definition of "agency" as set forth in § 31-7-1(a), and are subject to the statutory requirements of this section and other statutes governing public construction. Guice, Oct. 17, 2003, A.G. Op. 03-0537.

Pursuant to Section 31-7-13 as well as the Emergency Management and other statutes, it is legal to donate equipment, supplies, manpower and financial aid to another county in Mississippi during a state of emergency. Abraham, Sept. 9, 2005, A.G. Op. 05-0478.

State agencies and governing authorities may employ the respective provisions of Section 31-7-13(j) and (k) to contract for emergency repairs to public buildings that were damaged by Hurricanes Katrina and Rita, if the requirements of those paragraphs are met. Stringer, Nov. 4, 2005, A.G. Op. 05-0534.

Sections 31-17-1 and 31-17-13 authorize repairs and restoration of a public building on an emergency basis without complying with the advertisement requirements contained in Section 31-7-13. These provisions do not authorize the renovation and retrofitting of a newly acquired building without complying with such advertising requirements. Waller, June 9, 2006, A.G. Op. 06-0227.

RETIREMENT OF BONDS

Sec.
31-17-21. State bonds; notice of intention to purchase.
31-17-23. State bonds; best bid accepted.
31-17-25. State bonds; purchase of bonds sold below par.
31-17-27. State bonds; state bond retirement revolving fund.
31-17-29. State bonds; funds in state bond retirement revolving fund may be invested in federal securities.
31-17-31. State bonds; deposit of federal securities.
31-17-33. State bonds; method of retirement by state bond retirement commission.
31-17-35. State bonds; maturity dates to be noted.
31-17-37. State bonds; procedure when funds of state bond retirement revolving fund are inadequate to meet payments.
31-17-39. State bonds; expenditures from and transfer of state bond retirement revolving fund.

Sec.
31-17-41. State bonds; records and reports of state bond retirement commission.
31-17-43. State bonds; expenses of state bond retirement commission.
31-17-45. Local bonds; repurchase authorized.
31-17-47. Local bonds; notice of intention to purchase.
31-17-49. Local bonds; purchase of bonds sold below par.
31-17-51. Local bonds; restrictions on purchases.
31-17-53. Local bonds; pledge of securities, properties, and taxes.
31-17-55. Local bonds; cancellation.
31-17-57. State and local bonds; paying agent to repay unused funds.
31-17-59. State and local bonds; demand for repayment.
31-17-61. State bonds; destruction of paid and cancelled bonds and coupons.

§ 31-17-21. State bonds; notice of intention to purchase.

In the event it is determined to purchase outstanding bonds of the state as provided in Section 31-17-3, then sixty (60) days prior to the date fixed for the sale of said bonds, the state bond commission shall advertise its intention to purchase the bonds of the state for at least two (2) consecutive weeks in two (2) newspapers, one (1) of which shall be published in Jackson, Mississippi, and the other a financial journal having general circulation among bond buyers and dealers. Said advertisement shall state the amount of bonds to be purchased, the maximum price to be paid therefor, and the date upon which it will receive sealed proposals for outstanding bonds of the State of Mississippi.

HISTORY: Codes, 1942, § 4381; Laws, 1936, ch. 196.

RESEARCH REFERENCES

ALR.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 31-17-23. State bonds; best bid accepted.

The State Bond Commission shall accept the bid or bids determined by it to be most favorable to the state. The interest rate and maturity of the bonds to be purchased shall be taken into consideration in determining the best bid.

HISTORY: Codes, 1942, § 4382; Laws, 1936, ch. 196.

§ 31-17-25. State bonds; purchase of bonds sold below par.

Where the bonds of the state were sold for less than par and accrued interest, then the State Bond Commission shall not pay a greater price than the price for which the bonds were sold.

HISTORY: Codes, 1942, § 4383; Laws, 1936, ch. 196.

Cross References — Acceptance of best bid by the commission, see § 31-17-23.
Purchase of local bonds sold below par, see § 31-17-49.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 205 et seq.

§ 31-17-27. State bonds; state bond retirement revolving fund.

There is hereby created a fund in the State Treasury only to the extent herein provided, to be known as the "state bond retirement revolving fund," to be kept separate and distinct from all other funds of the state. Said state bond retirement revolving fund shall consist of such sums as may be appropriated thereto in accordance with law, all sums received from the sale of any bonds as hereinafter provided, all funds received from the payment of either principal or interest on such bonds, and all sums transferred to it or otherwise received and covered into said fund under the provisions of Sections 31-17-27 through 31-17-43. It shall be the duty of the state bond retirement commission, and it is hereby authorized and empowered, to make all needful rules and regulations not inconsistent with the provisions of said sections and which in the discretion of the commission may be necessary or advisable in the administration of the provisions of said sections. The state bond retirement revolving fund hereby created shall be a special trust fund irrevocably pledged to the ultimate retirement of all outstanding full faith and credit bonds of the State of Mississippi as hereinafter provided.

HISTORY: Laws, 1944, ch. 140, § 2, eff from and after passage (approved Feb. 4, 1944).

Cross References — State bond retirement commission, see § 31-17-11.

§ 31-17-29. State bonds; funds in state bond retirement revolving fund may be invested in federal securities.

Until such funds are needed for the payment of outstanding full faith and credit bonds of the state as herein provided, the state bond retirement commission is hereby authorized to invest any funds held in the state bond retirement revolving fund in bonds, notes, certificates, and other interest bearing obligations which are a direct obligation of the United States of America, hereinafter referred to as federal securities.

Any federal securities so purchased shall be the property of the State of Mississippi, and the principal and any and all interest accruing on such federal securities shall be collected by the commission as an agency of the state and covered into the state bond retirement revolving fund as the same shall mature and accrue. The commission is hereby authorized to sell any federal securities belonging to the state bond retirement revolving fund whenever, in the judgment of the commission, such sale will be to the best interest of the state. Sales shall be made at the best price obtainable, and all funds realized therefrom shall be covered into the state bond retirement revolving fund.

HISTORY: Laws, 1944, ch. 140, § 3, eff from and after passage (approved Feb. 4, 1944).

§ 31-17-31. State bonds; deposit of federal securities.

All sums paid into the state bond retirement revolving fund shall be kept by the State Treasurer as are other public funds. All federal securities purchased under the provisions of Section 31-17-29 shall be deposited with the State Treasurer and shall be kept by him as are other bonds owned by the state, but he may deposit same under proper trust receipts with one or more state depositories or with any federal reserve bank of the United States.

HISTORY: Laws, 1944, ch. 140, § 8; Laws, 1944, ch. 141, § 1, eff from and after passage (approved Feb. 24, 1944).

§ 31-17-33. State bonds; method of retirement by state bond retirement commission.

The purpose of Sections 31-17-27 through 31-17-43 is to create a fund for the ultimate retirement of the full faith and credit bonds of the State of Mississippi issued and outstanding as of July 1, 1944, and to set aside, earmark, and irrevocably pledge from the cash now in or to be added to the general fund of the state treasury a sum sufficient to pay all outstanding full faith and credit bonds of the State of Mississippi. To that end, therefore, not less than fifteen (15) days prior to each maturity date of full faith and credit bonds authorized to be retired from funds in the state bond retirement revolving fund under the provisions of said sections, an amount sufficient to pay the principal thereof at such maturity date shall be made available by the state bond retirement commission and shall be withdrawn from the state bond retirement revolving fund upon the order of the commission for the payment thereof, as provided by law. This process shall continue and like withdrawals shall be made at each succeeding maturity date of full faith and credit bonds authorized to be retired from funds in the state bond retirement revolving fund until the said state bond retirement revolving fund shall be exhausted or until all full faith and credit bonds of the state outstanding at July 1, 1944, shall be fully paid and satisfied. When all such bonds are paid, any balance remaining in said state bond retirement revolving fund shall be transferred to the general fund of the state.

HISTORY: Laws, 1944, ch. 140, § 4, eff from and after passage (approved Feb. 4, 1944).

§ 31-17-35. State bonds; maturity dates to be noted.

To effectuate the purpose of Sections 31-17-27 through 31-17-43, the state bond retirement commission is hereby required to take cognizance of the maturity date of the full faith and credit bonds of the state issued and outstanding as of July 1, 1944, and shall invest the funds constituting the state bond retirement revolving fund in United States government securities having maturity dates that bear a reasonable relation to the maturity dates of the full faith and credit bonds of the state to be retired from funds constituting the said state bond retirement revolving fund.

HISTORY: Laws, 1944, ch. 140, § 5, eff from and after passage (approved Feb. 4, 1944).

§ 31-17-37. State bonds; procedure when funds of state bond retirement revolving fund are inadequate to meet payments.

Should the maturity dates of federal securities held by the state bond retirement commission fail to coincide with the maturity dates of the full faith and credit bonds of the state to the extent that the funds belonging to the state bond retirement revolving fund shall be inadequate to pay the principal of full faith and credit bonds on any maturity date as required by the terms of Sections 31-17-27 through 31-17-43, then in such event the commission is hereby authorized and directed to either sell a sufficient amount of its securities to realize the amount necessary to pay the principal of such maturing bonds or borrow from other sources an amount necessary to provide the funds with which to make such payment, at the lowest and best rate of interest obtainable, after having publicly advertised for bids. The commission shall not pay a higher rate of interest than two percent (2%) for such loans. Such loans shall be evidenced by notes signed in the name of the State of Mississippi by the commission. No such loan shall be made unless there are federal securities held by the commission maturing not later than two (2) years next after the date of the note evidencing the loan, which said federal securities so held, together with the interest thereon, shall be sufficient in amount to retire the said loan and the interest thereon. In no event shall any federal securities held by the commission under the terms of said sections be pledged, hypothecated, or otherwise given as security for any such loan. The chairman of the commission shall accompany each note evidencing funds borrowed with his certificate showing in detail the federal securities held by the commission, the proceeds of which are to be used for the retirement of the said loan. When such certificate shall show that as of the date of any such loan, there was then held by the commission federal securities the par value of which, together with the interest thereon, shall equal or exceed the full amount of the loan covered thereby, such loan shall be in all respects a valid, binding obligation of the State of Mississippi, and shall be promptly paid according to its tenor by the commission.

HISTORY: Laws, 1944, ch. 140, § 6, eff from and after passage (approved Feb. 4, 1944).

§ 31-17-39. State bonds; expenditures from and transfer of state bond retirement revolving fund.

All sums paid into and actually in the state bond retirement revolving fund, including the original legislative appropriation, the proceeds from federal securities sold under the provisions of Sections 31-17-27 through 31-17-43, and sums received from the payment of either principal or interest on federal securities purchased hereunder, shall be continuously available to the state bond retirement commission for expenditure or transfer in accordance with the provisions and to carry out the purpose of said sections without the necessity of further appropriation by the Legislature. All such sums shall be considered in the State Treasury only for the purpose and to the extent necessary to make them public funds and subject to the same protection as other public funds. These funds shall be paid out or transferred as provided herein on warrants issued according to law, pursuant to requisitions signed by the chairman and secretary of the commission, on authority of the commission.

HISTORY: Laws, 1944, ch. 140, § 7, eff from and after passage (approved Feb. 4, 1944).

§ 31-17-41. State bonds; records and reports of state bond retirement commission.

The state bond retirement commission shall keep full and accurate minutes of its proceedings. Full and complete records of all transactions made under the authority of Sections 31-17-27 through 31-17-43 and of all sums received into and disbursed from said state bond retirement revolving fund shall be kept by the secretary; and an annual report thereof shall be made by the commission, which shall be filed in the office of the Secretary of State and be subject to public inspection. A full report of such transactions and of all such receipts and disbursements shall be made to each regular session of the legislature.

HISTORY: Laws, 1944, ch. 140, § 9, eff from and after passage (approved Feb. 4, 1944).

§ 31-17-43. State bonds; expenses of state bond retirement commission.

The state bond retirement commission shall pay the necessary expenses incurred in carrying out the provisions of Sections 31-17-27 through 31-17-43 out of any appropriation made for that purpose by the Legislature.

HISTORY: Laws, 1944, ch. 140, § 10, eff from and after passage (approved Feb. 4, 1944).

§ 31-17-45. Local bonds; repurchase authorized.

The board of supervisors of any county in this state, the mayor and board of aldermen of any municipality in this state, or the governing body of any other taxing district in the state may, in its discretion, purchase outstanding bonds of said county, municipality, or other taxing district and retire such bonds and pay the purchase price thereof out of any surplus remaining in the treasury of such county, municipality, or other taxing district at the end of any fiscal year. The governing body of said taxing districts shall determine the amount of bonds to be purchased, the maximum price to be paid therefor, but in no event to exceed par and accrued interest thereon, and the date upon which it will receive proposals to purchase said bonds.

HISTORY: Codes, 1942, § 4371; Laws, 1934, ch. 334.

Cross References — Purchase of outstanding bonds with excess bond and interest funds by county board of supervisors, see § 19-9-25.

Use of bond and interest funds to buy outstanding municipal bonds, see § 21-33-321.

Requirement that supervisors and taxing districts pay bonds and coupons of taxing districts promptly at maturity, see § 31-19-9.

§ 31-17-47. Local bonds; notice of intention to purchase.

In the event a surplus is remaining in the treasury of any county, municipality or other taxing district at the end of any fiscal year as provided by Section 31-17-45, then within ten (10) days thereafter the said board of supervisors, mayor and board of aldermen, or the governing body of other taxing districts may advertise its intention to purchase the bonds of such county, municipality, or other taxing district by publishing a notice thereof at least ten (10) days in some newspaper published in said county and one (1) other financial journal having a general circulation among bond buyers and dealers. Said advertisement shall state the amount of bonds to be purchased, the maximum price to be paid therefor, and the date upon which it will receive sealed proposals for outstanding bonds of said taxing district.

Said board of supervisors, mayor and board of aldermen, or the governing body of other taxing districts shall accept the bid or proposal determined and adjudged by it to be most favorable to such taxing district. The interest rate and maturity of the bonds to be purchased shall be taken into consideration in determining the best bid.

However, it shall be optional with the board of supervisors, mayor and board of aldermen, or the governing body of other taxing districts as to whether or not it will advertise its intention to purchase its bonds as provided by this section. In the event the board of supervisors, mayor and board of aldermen, or the governing body of other taxing districts shall determine that it is most advantageous to the county, city, or other taxing district not to so advertise, it may buy and retire its bonds at a private sale without publication of its intention to do so.

HISTORY: Codes, 1942, §§ 4372, 4373; Laws, 1934, ch. 334.

Cross References — Retirement of state bonds by state bond retirement commission, see § 31-17-33.

RESEARCH REFERENCES

ALR.
Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 31-17-49. Local bonds; purchase of bonds sold below par.

Where the bonds so purchased of said county, municipality, or other taxing districts were sold for less than par and accrued interest, then the said board of supervisors, mayor and board of aldermen, or other governing authority of such taxing district, as the case may be, shall not pay a greater price than the price for which the bonds were sold.

HISTORY: Codes, 1942, § 4374; Laws, 1934, ch. 334.

Cross References — Purchase of state bonds sold below par, see § 31-17-25.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 205 et seq.

§ 31-17-51. Local bonds; restrictions on purchases.

Surplus funds shall be expended under the provisions of Sections 31-17-45 through 31-17-51 for the purpose only of retiring the bonds issued in the particular taxing district for which said funds were collected. In no event shall bonds issued for any other taxing district be purchased with funds collected for any district other than those collected from the same identical taxing district.

HISTORY: Codes, 1942, § 4375; Laws, 1934, ch. 334.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 343 et seq.

§ 31-17-53. Local bonds; pledge of securities, properties, and taxes.

The counties, municipalities, and other local authorities possessing power to refund bonds under any statute of Mississippi may, for retiring and paying such refunding bonds and interest, pledge and make applicable to and available therefor any and all securities, properties, and taxes that were pledged, applicable to, or available for the paying of the original issue and interest thereon, so refunded, but only to the same extent, amount, and purposes.

HISTORY: Codes, 1942, § 4376; Laws, 1934, ch. 333.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 343 et seq.

§ 31-17-55. Local bonds; cancellation.

Whenever the board of supervisors of any county or the board of mayor and aldermen or the proper authorities of any municipalities and/or of any taxing district or other subdivision of any county may have acquired title to any of the bonds of such county, district, or municipality by purchase with, or at the expense of, the sinking funds of the particular sinking fund collected for the purpose of paying the principal of and interest on bonds of the issue so acquired, and sufficient funds shall accumulate in such sinking fund above the amount invested in such bonds, when added to other funds to be paid into said sinking funds within the succeeding twelve (12) months, to provide for and pay the principal of and interest on the bonds of such issue maturing and falling due within the succeeding twelve (12) months, the board of supervisors of such county and of the county embracing such district, and/or board of mayor and aldermen or proper authorities of such municipality or district or subdivision may cancel such bonds so acquired, by order entered upon its minutes and its clerk making entry of cancellation of such bonds upon the proper bond register and stamping or perforating same to show cancellation thereof after cancellation of such bonds, no further taxes shall be levied or collected for the payment of the principal of or interest on the bonds so canceled.

HISTORY: Codes, 1942, § 4377; Laws, 1936, ch. 275.

§ 31-17-57. State and local bonds; paying agent to repay unused funds.

When funds are forwarded to the paying agent of the state, any county or taxing district thereof, or any municipality for the purpose of paying bonds and interest coupons as provided by law, and all bonds and interest coupons to be paid out of such funds are not presented for payment to such paying agent within one (1) year after the due date of such bonds and interest coupons, such bonds and interest coupons shall be payable at the state treasury, the county depository, or the municipal depository, as the case may be.

The paying agent shall submit as of June 30 and December 31 of each year, and within thirty (30) days of that date, a statement of the amount paid on bonds and interest coupons of each bond issue during the previous twelve (12) months and the balance remaining in its hands for such payment at the conclusion of one (1) year on the date submitted, and at least one (1) year from the date the bonds or coupons were due. With the statement submitted, the paying agent shall remit and refund, without demand or request, such balance in its hands. Any money so recovered shall be deposited to the credit of the fund from which it was drawn, and if said fund no longer exists, then said money shall be deposited to the credit of the general fund of the state, county, district or municipality, as the case may be.

HISTORY: Codes, 1942, § 4378; Laws, 1938, ch. 134; Laws, 1982, ch. 376, § 4, eff from and after July 1, 1982.

§ 31-17-59. State and local bonds; demand for repayment.

It shall be the duty of the auditor and the state treasurer, within sixty (60) days after the close of each fiscal year, to check the records in their offices and ascertain definitely the amount of bonds and interest coupons which have matured more than twelve (12) months before the close of the last fiscal year and which have not been paid; and if it shall appear that funds for the payment of such bonds and coupons have been forwarded to the paying agent and have not been used for the purpose of paying such bonds and coupons, it shall be the duty of the state treasurer to make demand upon the paying agent for the repayment of said funds into the state treasury within thirty (30) days from the date of such demand.

In like manner, it shall be the duty of the clerk of the board of supervisors of each county and of the municipal clerk of each municipality, within sixty (60) days after the close of each fiscal year, to check the bond register and other records in his office and ascertain definitely the amount of bonds and interest coupons of the county, any taxing district, or of the municipality, as the case may be, which have matured more than twelve (12) months before the close of the last fiscal year and which have not been paid; and if it shall appear that funds for the payment of such bonds and coupons have been forwarded to the paying agent and have not been used for the purpose of paying such bonds and coupons, it shall be the duty of the clerk of the board of supervisors, or the municipal clerk, as the case may be, to make demand upon the paying agent for the repayment of said funds into the county depository or municipal depository, as the case may be, within thirty (30) days from the date of such demand.

In the event such paying agent shall fail to refund into the state treasury, the county depository, or municipal depository, as the case may be, such unexpended balance or balances as provided for in sections 31-17-57 and 31-17-59, it shall be the duty of the attorney general on behalf of the state, or the board of supervisors or municipal authorities on behalf of the county or municipality, as the case may be, to cause suit to be instituted for the recovery of such funds.

HISTORY: Codes, 1942, § 4379; Laws, 1938, ch. 134.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Duty of paying agent to repay unused funds, see § 31-17-57.

§ 31-17-61. State bonds; destruction of paid and cancelled bonds and coupons.

The State of Mississippi, acting by resolution of the State Bond Commission or any political subdivision thereof acting by resolution of its governing body, may authorize and direct the paying agent or agents for each issue of its bonds and coupons to destroy all bonds and coupons duly paid and cancelled, and may accept in lieu thereof their certificate containing a description of such bonds and coupons so destroyed as proof of such destruction. Such bonds and coupons duly paid and cancelled may be destroyed not earlier than one (1) year after the date upon which such bonds and coupons are surrendered for payment, and only after the resolution of the State Bond Commission or the political subdivision's governing body authorizing the destruction thereof has been delivered to the paying agent or agents of the respective bond issues.

HISTORY: Laws, 1982, ch. 376, § 3 (2nd ¶); Laws, 1985, ch. 429, eff from and after July 1, 1985.

Cross References — Destruction of paid and cancelled bonds and coupons by state treasurer, see § 7-9-34.

FISCAL ADVISOR AND FISCAL ADVISORY COUNCIL [REPEALED]

Sec.	
31-17-71.	Repealed.
31-17-73.	Repealed.

§ 31-17-71. Repealed.

Repealed by Laws, 1985, ch. 469, § 5, eff from and after April 4, 1985.
§ 31-17-71. [En Laws, 1978, ch. 478, § 4]

Editor's Notes — Former § 31-17-71 authorized the employment of a fiscal advisor with respect to the advance refunding of certain highway bonds.

§ 31-17-73. Repealed.

Repealed by Laws, 1984, ch. 488, § 339, eff from and after July 1, 1984.
§ 31-17-73. [En Laws, 1978, ch. 478, § 5]

Editor's Notes — Former § 31-17-73 provided for the creation of a fiscal advisory council to advise the state bond commission.

HIGHWAY FUNDING

Sec.	
31-17-75.	Legislative intent regarding highway funding.
31-17-77.	Restrictions on payment of implementation costs.

§ 31-17-75. Legislative intent regarding highway funding.

The intent of the Legislature is for the structuring of maturity schedules and escrow accounts which will allow the greatest amount of revenues to be used for current construction of highways, while retaining a sound program of retiring the refunding bonds in an economically feasible manner. It is the further intent that all funds available under any of the provisions of Chapter 478, Laws of 1978, shall be invested at all times when not needed to pay the expenses authorized under the provisions of Chapter 478, Laws of 1978, and to pay the principal of and the interest on any bonds payable under the provisions of Chapter 478, Laws of 1978, as they become due.

HISTORY: Laws, 1978, ch. 476, § 6, eff from and after passage (approved April 6, 1978).

§ 31-17-77. Restrictions on payment of implementation costs.

None of the costs involved in the implementation of the provisions of Chapter 478, Laws of 1978, shall be paid to any member or employee of the executive or legislative department of the State of Mississippi, either directly or indirectly, or to any firm, association, or corporation in which any member or employee of the executive or legislative department has a pecuniary interest; provided, however, commissions paid to banks and licensed securities dealers in the usual and ordinary course of business shall not be considered cost for the purposes of this section; provided, further, any such state employee or official may be reimbursed for his actual expenses. Any person, firm, association or corporation making or receiving such payments in violation of the provisions of this section shall be liable to the State of Mississippi for triple the amount of such payments.

The provisions of this section shall also apply to any person who was a member or employee of the executive or legislative department of the State of Mississippi on April 6, 1978.

HISTORY: Laws, 1978, ch. 478, § 7, eff from and after passage (approved April 6, 1978).

STATE BOND COMMISSION; NOTES TO MAINTAIN WORKING BALANCE IN GENERAL FUND

Sec.
31-17-101. State Bond Commission; members; delegation of powers and duties; adoption of rules.
31-17-103. Issuance of notes authorized; terms and conditions.
31-17-105. Purposes and procedures; maintenance of working balance in State General Fund; interfund loans.
31-17-107. Full faith and credit of state pledged on notes.
31-17-109. Sale of notes.
31-17-111. Commission to fix terms and details of notes and provide for issuance.
31-17-113. Use of proceeds limited to purposes provided.

Sec.
31-17-115. Issuance of interim certificates in anticipation of notes; supplemental powers conferred in issuance of bonds.
31-17-117. Notes and interim certificates to be fully negotiable.
31-17-119. Taxation of notes, interest and income.
31-17-121. State treasurer to keep records of notes issued.
31-17-123. Borrowing authorized to offset temporary cash flow deficiencies; borrowing not to exceed amount which can be repaid in fiscal year of loan.
31-17-125. Authority to borrow money and funds.
31-17-127. Bonds for cost of Four-Lane Highway Program; Four-Lane Highway Trust Fund.

§ 31-17-101. State Bond Commission; members; delegation of powers and duties; adoption of rules.

There is hereby created a commission to be known as as the "State Bond Commission" (hereinafter referred to as the "commission"), which shall consist of the Governor, Attorney General and Treasurer of the State of Mississippi. The Governor shall act as chairman of the commission, the Attorney General shall act as secretary of the commission, and the State Treasurer shall be treasurer of the commission. The successive incumbents in the offices of Governor, Attorney General and State Treasurer shall succeed their predecessors as members of the commission upon assumption of their duties and the completion of their oaths of office. The powers of the commission shall be vested in and exercised by a majority of the members of the commission. The commission may delegate to one or more of its members, or to its officers, agents and employees, such powers and duties as it may deem proper, and may adopt rules for the conduct of its business.

HISTORY: Laws, 1966, ch. 557 § 1; Laws, 1979, ch. 466, § 1, eff from and after July 1, 1979.

Cross References — Borrowing of money from special funds for State General Fund prohibited as long as there is more than nineteen million dollars in the Working Cash-Stabilization Reserve Fund, see § 27-103-203.

§ 31-17-103. Issuance of notes authorized; terms and conditions.

(1) For the purposes of offsetting any temporary cash flow deficiencies in the General Fund and to maintain a working balance in the General Fund, the commission is authorized at any time and from time to time to borrow money in an aggregate principal amount not to exceed seven and one-half percent (7-½%) of the total appropriation made by the State Legislature from the General Fund for the fiscal year in which such deficiency or deficiencies occur, issuing therefor notes as authorized hereunder. Notes may be issued from time to time as the proceeds thereof are needed. The notes shall be authorized by the commission and shall have such terms and details as may be provided by resolution of the commission; provided, however, each resolution of the commission authorizing notes shall:

(a) Describe the need for the proceeds of the notes to be issued; and

(b) Specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one (1) time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) to be incurred through the issuance of such notes, and the maturity date or maximum maturity date of the notes, which maturity date or maximum maturity date shall not extend beyond the last day of the third month following the end of the fiscal year in which the notes were issued.

(2) The commission may also provide in any authorizing resolution for the form of the notes (either fully registered form, bearer form or registered as to principal only form), denominations, place or places of payment (either within or without the State of Mississippi), registration provisions, exchange privileges and manner of execution (including the use of facsimile signatures and a facsimile of the seal of the State of Mississippi). Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the commission, in its discretion, may provide for the notes to be issued and sold, in whole or in part, from time to time, and may delegate to the State Treasurer the power to determine the time or times of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes, as may be deemed appropriate by the commission, or the State Treasurer in the event of such delegation. The commission may also provide in the resolution authorizing the issuance of notes, in its discretion, but subject to the limitations contained in this section, (a) for the employment of one or more persons or firms to assist the commission in the sale of the notes, (b) for the appointment of one or more banks or trust companies, either within or without the State of Mississippi, as depository for safekeeping, and as agent for the delivery and payment, of the notes, (c) for the refunding of the notes, from time to time, without further action by the commission, unless and until the commission revokes such authority to refund, provided that in no event shall any refunding note be issued with a maturity date later than the last day of the third month following the end of the fiscal year in which the notes to be refunded were issued, (d) for the rating of the notes by one or more nationally recognized rating agencies, and (e) for such other terms and conditions as the commission may deem appropriate. In connection with the issuance and sale of notes as provided in this section, the commission may arrange for lines of credit with any bank, firm or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the commission may authorize in the resolution approving the same. The commission is authorized to pay all cost of issuance of the notes, including, without limitation, rating agency fees, printing costs, legal fees, bank or trust company fees, cost to employ persons or firms to assist in the sale of the notes, line of credit fees and charges and all other amounts related to the costs of issuing the notes from amounts

available therefor in the General Fund or from the proceeds of the notes, in the discretion of the commission.

HISTORY: Laws, 1966, ch. 557 § 2; Laws, 1979, ch. 466, § 1; Laws, 1982, ch. 334, § 1; Laws, 1992, ch. 484 § 15, eff from and after passage (approved May 7, 1992).

Cross References — Payment of costs authorized under this section, see § 31-17-105.

Additional powers conferred in connection with issuance of bonds and notes, see § 31-21-5.

§ 31-17-105. Purposes and procedures; maintenance of working balance in State General Fund; interfund loans.

(1) The said notes shall be issued for the purpose of maintaining a sufficient working balance in the State General Fund. In effectuating the purposes of Section 31-17-101 et seq., the following procedures shall be followed:

(a) Immediately following the close of business on the last day of every calendar month, the State Fiscal Officer shall submit to each member of the State Bond Commission a certified statement relative to the actual unexpended cash balance remaining to the credit of the State General Fund, and state whether or not, in his opinion, said balance was sufficient, when combined with normal receipts for the ensuing month, to provide enough cash to pay obligations during the month at the time they are due, and if it is not sufficient, stating the amount which will be needed. The State Fiscal Officer shall also submit to the State Bond Commission, if he deems the General Fund cash balance insufficient, a statement showing cash balances in all special funds in the State Treasury which appear to have cash in excess of their immediate needs. The State Bond Commission shall immediately ascertain whether such balances are, in fact, in excess of current needs;

(b) The State Bond Commission shall issue notes as authorized hereunder in whatever amount it finds to be necessary, upon the recommendation of the State Fiscal Officer, to maintain a sufficient working balance in the General Fund; or

(c) If the State Bond Commission determines that it is not practical to issue notes at that time, or if the State Bond Commission determines it is not in the financial interests of the state to issue the notes at that time, and if the cash balance in special funds in the State Treasury in fact have cash in excess of their immediate needs, then the State Bond Commission shall, to the extent that such balances are available, make temporary loans or transfers therefrom to the General Fund. To accomplish such transfer or loan, a requisition shall be issued by the bond commission against the special fund or funds, a copy thereof to be sent to each agency responsible for the administration of the fund or funds so utilized. The State Fiscal Officer shall issue his disbursement warrants against the fund or funds in the manner prescribed in governing statutes, and shall maintain a complete record of such transfers or loans and repayments thereof. A similar but separate record shall be maintained by the State Treasurer's office, to afford a double check for the benefit of the bond commission and agencies administering any special funds involved. In the event any special fund has such a loan outstanding to the General Fund and needs the use of the money before the balance of the General Fund is sufficient to make repayment thereof, the bond commission is authorized and directed to effectuate a loan or transfer from other special fund or funds to the General Fund in an amount sufficient to make repayment, or if no other special fund balances are available, the bond commission shall immediately issue notes in the amount needed, as authorized in Section 31-17-103.

(2) It shall be the duty of the State Fiscal Officer to advise the bond commission, each month after such notes have been issued or such loans or transfers have been made, whether or not the cash balance to the credit of the State General Fund is sufficient to make full or partial payment of such obligations in addition to other current requirements, and if such is the case, the commission shall promptly issue requisitions on the State General Fund for whatever amount can be paid on such obligations without reducing the General Fund cash balance below the amount needed for current requirements during the remainder of the month; and the State Fiscal Officer shall issue his warrants accordingly. The State Treasurer shall requisition warrants, as appropriate, from the State Fiscal Officer, for the payment of interest on notes authorized hereunder and the payment of any costs authorized under Section 31-17-103.

(3) The State Bond Commission is also authorized, in the manner provided herein, to make temporary loans or transfers from special funds in the State Treasury to pay amounts authorized under Section 31-17-101 et seq., including without limitation payment of the principal of and interest on notes issued hereunder.

(4) Notes herein authorized to be issued may be reissued, and interfund loans or transfers herein authorized to be made may be remade, provided the total amount of such notes and interfund loans or transfers combined, outstanding at any one (1) time, shall not exceed seven and one-half percent (7-½%) of the total appropriations made by the Legislature out of the General Fund for the fiscal year during which such notes are issued and such interfund loans or transfers are made.

(5) The State Bond Commission shall immediately send notice of any action relating to the issuance of bonds or the borrowing of money, under authority of this or any other section, to the Legislative Budget Office.

HISTORY: Laws, 1966, ch. 557, § 3; Laws, 1979, ch. 466, § 1; Laws, 1982, ch. 334, § 2; Laws, 1984, ch. 488, § 194; Laws, 1992, ch. 484, § 16, eff from and after passage (approved May 7, 1992).

Editor's Notes — Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 31-17-107. Full faith and credit of state pledged on notes.

For the prompt payment of said notes at maturity, both principal and interest, the full faith, credit and resources of the State of Mississippi are hereby irrevocably pledged.

HISTORY: Laws, 1966, ch. 557 § 4; Laws, 1979, ch. 466, § 1, eff from and after July 1, 1979.

§ 31-17-109. Sale of notes.

The notes herein authorized shall be sold from time to time by the commission as the needs for the proceeds thereof may arise, which sale shall be made on such terms and in such manner as may be deemed by the commission to be to the best interest of the State of Mississippi, except as herein otherwise provided.

HISTORY: Laws, 1966, ch. 557 § 5; Laws, 1979, ch. 446, § 1, eff from and after July 1, 1979.

Cross References — Terms and conditions for issuance of notes, see § 31-17-103.

§ 31-17-111. Commission to fix terms and details of notes and provide for issuance.

The commission in providing for the issuance of the notes herein authorized shall have full discretion (consistent with the provisions of Section 31-17-103 hereof) in fixing the terms and details thereof, and may provide for the issuance of said notes in such form, executed in such manner and payable at such place or places, and containing such terms, covenants and provisions as said commission may, by resolution or resolutions, provide.

HISTORY: Laws, 1966, ch. 557, § 6; Laws, 1979, ch. 466, § 1, eff from and after July 1, 1979.

§ 31-17-113. Use of proceeds limited to purposes provided.

The proceeds of the sale of the notes herein authorized shall be paid into the state treasury and used for the purpose herein provided, and for no other purposes.

HISTORY: Laws, 1966, ch. 557 § 7; Laws, 1979, ch. 466, § 1, eff from and after July 1, 1979.

§ 31-17-115. Issuance of interim certificates in anticipation of notes; supplemental powers conferred in issuance of bonds.

In anticipation of the issuance of the notes herein authorized, the commission may authorize and issue interim certificates payable to bearer or to the purchaser of the notes. Such interim certificates may be in such form and may contain such terms, conditions or provisions and such agreement or agreements relating to their discharge, through the delivery of the notes, as the commission may by resolution or resolutions determine.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

HISTORY: Laws, 1966, ch. 557 § 8; Laws, 1979, ch. 466, § 1; Laws, 1983, ch. 494, § 12, eff from and after passage (approved April 11, 1983).

§ 31-17-117. Notes and interim certificates to be fully negotiable.

All notes and interim certificates, issued pursuant to the provisions of Sections 31-17-101 through 31-17-123, shall be fully negotiable within the meaning and for all purposes of the Uniform Commercial Code as said law is now or may hereafter be in force in the State of Mississippi.

HISTORY: Laws, 1966, ch. 557 § 9; Laws, 1979, ch. 466, § 1, eff from and after July 1, 1979.

§ 31-17-119. Taxation of notes, interest and income.

All notes issued hereunder and all interest thereon and income therefrom shall be exempt from all taxation except gift, transfer and inheritance taxes.

HISTORY: Laws, 1966, ch. 557, § 10; Laws, 1979, ch. 466, § 1, eff from and after July 1, 1979.

§ 31-17-121. State treasurer to keep records of notes issued.

The State Treasurer shall keep a record in his office of the issuance of the notes herein authorized and shall execute a certificate to that effect on the back of each note, which certificate may be signed by either the original or the facsimile signature of the State Treasurer. The State Treasurer shall also keep proper records relating to the sale and issuance of notes hereunder and the amounts received therefor and paid into the treasury for the purposes herein provided.

HISTORY: Laws, 1966, ch. 557, § 11; Laws, 1979, ch. 466, § 1, eff from and after July 1, 1979.

§ 31-17-123. Borrowing authorized to offset temporary cash flow deficiencies; borrowing not to exceed amount which can be repaid in fiscal year of loan.

(1) The intent of the Legislature is to authorize borrowing funds under the provisions of Sections 31-17-101 through 31-17-123 to offset any temporary

cash flow deficiencies and should not be construed to authorize the borrowing of any funds in an amount that cannot be repaid during the fiscal year in which the funds are borrowed.

(2)(a) Notwithstanding any provision of this chapter to the contrary, in the event that the State Fiscal Officer and the State Treasurer make a determination that (i) state-source special funds are not sufficient to cover deficiencies in the General Fund, (ii) the State of Mississippi is unable to repay special fund borrowing within the fiscal year in which it was borrowed, or (iii) state-source funds are insufficient for disaster support and/or assistance purposes due to Hurricanes Katrina and/or Rita; and that the State Bond Commission makes a determination that such deficiency, inability to repay, or insufficiency is the result of a state of emergency within the State of Mississippi, the State Bond Commission is authorized to obtain a line of credit, in an amount not to exceed Five Hundred Million Dollars ($500,000,000.00), from a commercial lender, investment banking group or a consortium of either, or both. The length of indebtedness under this subsection shall not extend past five (5) years following the origination of the line of credit. The line of credit shall be authorized and approved by the State Bond Commission and shall have such terms and details as may be provided by resolution of the State Bond Commission. Loan proceeds shall be received and disbursed by the State Treasurer and deposited into the Disaster Recovery Fund, a special fund hereby created in the State Treasury, and shall be used to cover deficiencies in the General Fund, to repay special fund borrowing and/or to cover any insufficiency in disaster support and/or assistance. Monies remaining in the Disaster Recovery Fund at the end of a fiscal year shall not lapse into the State General Fund, but shall remain in the Disaster Recovery Fund and any interest earned or investment earnings on amounts in the Disaster Recovery Fund shall remain in the fund.

(b) As security for the repayment of the principal and interest on the line of credit provided for in paragraph (a) of this subsection, the full faith, credit and resources of the State of Mississippi are hereby irrevocably pledged.

(c) Upon approval of the State Fiscal Officer, the Director of the Mississippi Emergency Management Agency is authorized to use amounts from the line of credit to match federal funds, and for personnel, call-back wages, base and overtime wages, travel, per diem and other out-of-pocket expenses incurred as a result of Hurricanes Katrina and/or Rita.

(d) This subsection (2) shall be complete authority for the borrowing authorized hereunder and shall not be subject to the limitations provided in the other provisions of this chapter or otherwise under state law.

(e) The State Treasurer shall notify the Legislative Budget Office and the State Department of Finance and Administration of each transfer into and out of the Disaster Recovery Fund on a quarterly basis.

HISTORY: Laws, 1966, ch. 557, § 12; Laws, 1979, ch. 466, § 1; Laws, 1984, ch. 488, § 195; Laws, 1985, ch. 525, § 7; Laws, 1986, ch. 480, § 3; Laws, 1988, ch. 518, § 21; Laws, 1992, ch. 484 § 10; Laws, 2005, ch. 440, § 2; Laws, 2005, 5th Ex Sess,

ch. 12, § 1; Laws, 2006, 1st Ex Sess, ch. 8, § 17; Laws, 2009, ch. 341, § 1, eff from and after passage (approved Mar. 16, 2009).

Editor's Notes — Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 2006, 1st Ex Sess, ch. 8, § 20, provides:

"SECTION 20. Upon passage of this act, the State Fiscal Officer shall transfer One Hundred Million Dollars ($100,000,000.00) from the Budget Contingency Fund created in Section 27-103-301 to the Disaster Recovery Fund created in Section 31-17-123."

Cross References — Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Transfer of money from the Working Cash-Stabilization Reserve Fund to cover year-end shortfalls in the State General Fund, see § 27-103-203.

Governor or Department of Finance and Administration not to rescind or restore certain reductions or revisions of estimates or allocations of funds made under § 27-104-13 or § 31-17-123, see § 27-104-14.

Mississippi Emergency management law, see §§ 33-15-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Authority of State Treasurer to transfer funds from the pool of special funds in the state treasury to the disaster recovery fund for the purpose of covering insufficiencies in disaster support and assistance. Reeves, Oct. 26, 2005, A.G. Op. 05-0543.

§ 31-17-125. Authority to borrow money and funds.

This chapter, without reference to any other statute, shall be deemed to be full and complete authority for the borrowing of money and funds in the manner and for the purposes authorized hereunder, and none of the restrictions, requirements, conditions or limitations of law applicable to the issuance or sale of notes or other evidences of indebtedness or the making of any arrangements authorized hereunder shall apply and all powers necessary to be exercised in order to carry out the provision of this chapter are hereby conferred.

HISTORY: Laws, 1982, ch. 334, § 3, eff from and after passage (approved March 11, 1982).

§ 31-17-127. Bonds for cost of Four-Lane Highway Program; Four-Lane Highway Trust Fund.

(1)(a) At any time when the revenue designated under Sections 27-5-101, 27-19-99, 27-19-325, 27-57-37 and 27-65-75 to defray the cost of constructing or reconstructing highways under the Four-Lane Highway Program created under Section 65-3-97 is insufficient to fund the construction priorities as they are scheduled in subsection (3) of Section 65-3-97, the State Bond Commission, upon receipt of a resolution from the Mississippi Transportation Commission requesting the same, is hereby authorized, on the credit of the state, to make temporary borrowings in the aggregate principal amount not to exceed Two Hundred Million Dollars ($200,000,000.00) in order to provide funds in such amounts as may, from time to time, be deemed necessary. In order to provide for, and in connection with such temporary borrowings, the State Bond Commission is hereby authorized in the name and on behalf of the state to enter into any purchase, loan or credit agreement, or agreements, or other agreement or agreements with any banks or trust companies or other lending institutions, investment banking firms or persons in the United States having power to enter into the same, which agreements may contain such provisions not inconsistent with the provisions of Sections 27-5-101, 27-19-99, 27-19-325, 27-57-37, 27-65-75 and 65-3-97 as may be authorized by the State Bond Commission.

(b) As an alternative to the issuance of bonds under the provisions of Sections 65-39-5 through 65-39-33, for the purpose of providing funds for infrastructure projects under Section 65-39-1, the State Bond Commission, upon receipt of a resolution from the Mississippi Transportation Commission requesting the same, is hereby authorized, on the credit of the state, to make temporary borrowings in the aggregate principal amount not to exceed Three Hundred Million Dollars ($300,000,000.00) in order to provide funds in such amounts as may, from time to time, be deemed necessary. In order to provide for, and in connection with such temporary borrowings, the State Bond Commission is hereby authorized in the name and on behalf of the state to enter into any purchase, loan or credit agreement, or agreements, or other agreement or agreements with any banks or trust companies or other lending institutions, investment banking firms or persons in the United States having power to enter into the same, which agreements may contain such provisions not inconsistent with the provisions of Section 65-39-1 as may be authorized by the State Bond Commission. It is the intent of the Legislature that the Transportation Commission adopt such a resolution or resolutions as often and as frequently as may be necessary to insure the availability of sufficient funds to provide timely completion of all projects authorized under Section 65-39-1.

(2) All temporary borrowings made under this section shall be evidenced by notes of the state which shall be issued, from time to time, for such amounts not exceeding in the aggregate the applicable statutory and constitutional debt limitation, in such form and in such denominations and subject to terms and conditions of sale and issue, prepayment or redemption and maturity, rate or rates of interest and time of payment of interest as the State Bond Commission shall authorize and direct and in accordance with Sections 27-5-101, 27-19-99, 27-19-325, 27-57-37, 27-65-75, 65-3-97 and 65-39-1; however, such notes shall mature not more than ten (10) years from the date of issuance. The State Bond Commission may provide for the subsequent issuance of refunding notes or bonds to refund, upon issuance thereof, such notes, and may specify such other terms and conditions with respect to such refunding notes or bonds thereby authorized for issuance as the seller may determine and direct, however such refunding notes or bonds shall mature not more than ten (10) years from date of issuance.

(3) In connection with the issuance of such refunding notes or bonds, the State Bond Commission is hereby authorized in the name and on behalf of the

state to enter into agreements with any banks, trust companies, investment banking firms or other institutions or persons in the United States having the power to enter the same:

(a) To purchase or underwrite an issue or series of issues of refunding notes, or bonds.

(b) To enter into any purchase, loan or credit agreements, and to draw monies pursuant to any such agreements on the terms and conditions set forth therein and to issue notes as evidence of borrowings made under any such agreements.

(c) To appoint or act as issuing and paying agent or agents with respect to such refunding notes or bonds.

(d) To do such other acts as may be necessary or appropriate to provide for the payment, when due, of the principal of and interest on such refunding notes or bonds.

Such agreements may provide for the compensation of any purchasers or underwriters of such refunding notes or bonds by payment of a fixed fee or commission at the time of issuance thereof, and for all other costs and expenses, including fees for agreements related to such refunding notes or bonds and paying agent costs. Costs and expenses of issuance may be paid from the proceeds of the refunding notes or bonds.

(4) At or prior to the time of delivery of these refunding notes or bonds, the State Bond Commission shall determine the principal amounts, dates of issue, interest rate or rates, rates of discount, denominations and all other terms and conditions relating to the issuance. The State Treasurer shall perform all acts and things necessary to pay or cause to be paid, when due, all principal of and interest on the notes being refunded by such refunding notes or bonds and to assure that the same may draw upon any monies available for that purpose pursuant to any purchase loan or credit agreements established with respect thereto, all subject to the authorization and direction of the seller.

(5)(a)(i) Such outstanding refunding notes or bonds evidencing such borrowings to defray the cost of constructing or reconstructing highways under the Four-Lane Highway Program established in Section 65-3-97 shall be funded and retired by the revenue designated under Sections 27-5-101, 27-19-99, 27-19-325, 27-57-37 and 27-65-75 and from any and all legally available federal aid grant reimbursements which are hereby pledged for this purpose, which is intended to be a priority use for such pledged funds for so long as any notes, refunding notes or bonds are outstanding. Such revenues shall be deposited into the Four-Lane Highway Trust Fund for the repayment of the debt service of the refunding notes or bonds in accordance with paragraph (b) of this subsection (5). Such refunding notes or bonds issued pursuant to the provisions of this section shall be secured by a first and priority lien on the revenues pledged therefor.

(ii) Outstanding notes evidencing such borrowings to defray the cost of infrastructure projects under Section 65-39-1 may be funded and retired from monies in the Gaming Counties Bond Sinking Fund created under

Section 65-39-3. The refunding notes or bonds must be issued and sold not later than a date two (2) years after the date of issuance of the first notes evidencing such borrowings to the extent that payment of such notes has not otherwise been made or provided for by sources other than proceeds of refunding notes or bonds.

(b) There is created in the State Treasury a special fund designated as the "Four-Lane Highway Trust Fund" into which shall be deposited the funds designated in this paragraph until the balance in the fund is equal to the next two (2) debt service requirements of the refunding notes or bonds issued to defray the cost of the Four-Lane Highway Program established in Section 65-3-97. Once the required balance in the fund is reached, deposits shall cease until the amount in the fund falls below the amount equal to the next two (2) debt service requirements of the refunding bonds or notes. Unexpended amounts in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund. Money in the fund may not be used or expended for any purpose except as authorized under this subsection. The State Treasurer shall disburse money from the fund for the purposes authorized under this subsection. Deposits into the fund shall be made as follows:

(i) Federal aid grant reimbursements designated for the Four-Lane Highway Program established in Section 65-3-97 shall be deposited into the Four-Lane Highway Trust Fund until such time as the balance requirements of this section are met.

(ii) If the federal aid grant reimbursements designated for the Four-Lane Highway Program are projected by the State Treasurer to be insufficient to meet the balance requirements of this paragraph, then the revenue designated under Sections 27-5-101, 27-19-99, 27-19-325, 27-57-37 and 27-65-75 to defray the cost of the Four-Lane Highway Program shall be deposited into the Four-Lane Highway Trust Fund.

(iii) If the amounts required to be deposited by items (i) and (ii) of this paragraph (b) are projected by the State Treasurer to be insufficient to meet the balance requirements of this paragraph, then any other legally available federal aid grant reimbursements shall be deposited into the Four-Lane Highway Trust Fund.

At such times as the balance requirements of this paragraph are met, the State Treasurer shall transfer all excess amounts to the State Highway Fund.

(c) Any state laws authorizing the imposition or distribution of taxes, fees or federal reimbursements designated for the Four-Lane Highway Program created under Section 65-3-97, or that affect those taxes, fees and federal reimbursements pledged for the payment of refunding notes or bonds issued under this section, shall not be amended or repealed or otherwise directly or indirectly modified so as to impair such outstanding refunding notes or bonds unless such refunding notes or bonds have been discharged in full or provisions have been made for a full discharge or defeasance.

(6) The proceeds of all such temporary borrowing shall be paid to the Mississippi Transportation Commission to be held and disposed of in accordance with the provisions of Sections 27-5-101, 27-19-99, 27-19-325, 27-57-37, 27-65-75, 65-3-97 and 65-39-1.

HISTORY: Laws, 1987, ch. 322, § 30; Laws 1994, ch. 557, § 39; Laws 1995, ch. 523, § 1; Laws 1997, ch. 562, § 1; Laws 1999, ch. 575, § 1, eff from and after passage (approved Apr. 21, 1999).

TEMPORARY BORROWINGS IN ANTICIPATION OF ISSUANCE OF STATE-SUPPORTED DEBT

Sec.
31-17-151. Definitions.
31-17-153. State Bond Commission authorized to make temporary borrowings in anticipation of issuance of state-supported debt.
31-17-155. Temporary borrowings to be evidenced by notes; security.
31-17-157. Issuance of replacement notes.
31-17-159. Payment of principal and interest.
31-17-161. Funding and retirement of temporary borrowings.
31-17-163. Proceeds of temporary borrowings paid to State Treasurer.
31-17-165. Powers and authority of commission.
31-17-167. Purpose of Sections 31-17-151 through 31-17-181.
31-17-169. Full and complete authority for all temporary borrowings.
31-17-171. Nothing in Sections 31-17-151 through 31-17-181 to be construed as applicable to obligations other than those that are state-supported.
31-17-173. Sections 31-17-151 through 31-17-181 deemed to be full and complete authority for exercise of powers granted therein.
31-17-175. Notes to be fully negotiable and shall be "securities" within the meaning of the Uniform Commercial Code.
31-17-177. Notes and income therefrom exempt from state taxation.
31-17-179. Severability.
31-17-181. Validation of notes.

§ 31-17-151. Definitions.

As used in Sections 31-17-151 through 31-17-181, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Notes" shall mean notes, replacement notes, refunding notes or similar evidence of indebtedness.

(b) "State-supported debt" shall mean any bonds or other evidence of indebtedness, including bonds to be issued to fund reserve funds and costs of issuance, as previously or hereinafter authorized, from time to time, to be issued by the state for which the state is or will be constitutionally obligated to pay debt service or is or will be contractually obligated to pay debt service subject to an appropriation; however, this definition shall not apply to debt issued by the Mississippi Development Bank or similar state agencies or authorities.

(c) "State" shall mean the State of Mississippi.

(d) "Commission" shall mean the State Bond Commission of the state.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 170, eff from and after passage (approved November 24, 2004).

§ 31-17-153. State Bond Commission authorized to make temporary borrowings in anticipation of issuance of state-supported debt.

Pending the issuance of any state-supported debt, the commission is hereby authorized in accordance with the provisions of Sections 31-17-151 through 31-17-181 and on the credit of the state, to make temporary borrowings, from time to time, in anticipation of the issuance of state-supported debt in order to provide funds in such amounts as may, from time to time, be deemed advisable prior to the issuance of state-supported debt. In order to provide for and in connection with such temporary borrowings, the commission is hereby authorized in the name and on behalf of the state, to enter into agreements, which agreements may contain such provisions not inconsistent with the provisions of Sections 31-17-151 through 31-17-181, with any banks, trust companies, investment banking firms or other institutions or persons in the United States of America having the power to enter the same:

(a) To purchase or underwrite an issue or series of issues of notes.

(b) To enter into any purchase, loan, line of credit, credit or similar agreements, and to draw monies, from time to time, pursuant to any such agreements on the terms and conditions set forth therein and to issue notes as evidence of borrowings made under any such agreements.

Such agreements may provide for the compensation of any purchasers or underwriters of such notes by payment of a fee or commission, and for all other costs and expenses, including fees for agreements related to the sale and issuance of notes. All costs and expenses of sale and issuance of notes may be paid from the proceeds of the notes or from any other lawfully available source of monies.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 171, eff from and after passage (approved November 24, 2004).

§ 31-17-155. Temporary borrowings to be evidenced by notes; security.

All temporary borrowings made under Sections 31-17-151 through 31-17-181 shall be evidenced by notes of the state which shall be sold and issued, from time to time, at competitive or negotiated sale, for such amounts not exceeding in the aggregate the applicable statutory and constitutional debt limitation in connection with the related state-supported debt, in such form and in such denominations and subject to terms and conditions of sale and issuance, prepayment or redemption and maturity, variable and/or fixed rate or rates of interest, time of payment of interest and other applicable provisions as the commission shall authorize and direct and in accordance with Sections

31-17-151 through 31-17-181. All notes issued pursuant to Sections 31-17-151 through 31-17-181 may be secured by a pledge of: (a) the same source of security as the related state-supported debt, or (b) such other security as the state may lawfully pledge, or both, all as provided by resolution of the commission. Notwithstanding any other provision of law to the contrary, notes may be issued for any otherwise authorized state-supported debt. Except as otherwise provided in Sections 31-17-151 through 31-17-181 or when in conflict with the provisions of Sections 31-17-151 through 31-17-181, such notes shall be subject to the terms and provisions of the legislation authorizing the issuance of such state-supported debt.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 172, eff from and after passage (approved November 24, 2004).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected two typographical errors in the paragraph. The word "condition" was changed to "conditions" following "subject to terms and" in the first sentence. The second occurrance of the word "Sections" was deleted preceding "Sections 31-17-151 through 31-17-181." The Joint Committee ratified the correction at its May 31, 2006, meeting.

§ 31-17-157. Issuance of replacement notes.

The commission is authorized to provide for the subsequent issuance of replacement notes to refund, upon issuance thereof, such notes, and may specify such other terms and conditions with respect to the replacement notes thereby authorized for issuance as the commission may determine and direct.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 173, eff from and after passage (approved November 24, 2004).

§ 31-17-159. Payment of principal and interest.

The State Treasurer shall perform all acts and things necessary to pay or cause to be paid, when due, all principal of and interest on the notes and to assure that the same may draw upon any monies available for that purpose pursuant to any purchase, loan, line of credit, credit or similar agreements established with respect thereto, all subject to the authorization and direction of the commission.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 174, eff from and after passage (approved November 24, 2004).

§ 31-17-161. Funding and retirement of temporary borrowings.

Outstanding notes evidencing such temporary borrowings shall be funded and retired by the issuance and sale of state-supported debt, from time to time, as determined by the commission and must be sold and issued not later than a date four (4) years after the date of issuance of the first notes evidencing such temporary borrowings to the extent that payment of such notes has not otherwise been made or provided for by sources other than proceeds of replacement notes.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 175, eff from and after passage (approved November 24, 2004).

§ 31-17-163. Proceeds of temporary borrowings paid to State Treasurer.

The proceeds of all such temporary borrowings shall be paid to the State Treasurer to be held and disposed of in accordance with such laws of the state authorizing the sale and issuance of the related state-supported debt.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 176, eff from and after passage (approved November 24, 2004).

§ 31-17-165. Powers and authority of commission.

The commission is hereby authorized to do such other acts and enter into such other agreements as may be needed or be appropriate in connection with the sale, issuance and payment of the notes and any program developed by the commission in relation thereto.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 177, eff from and after passage (approved November 24, 2004).

§ 31-17-167. Purpose of Sections 31-17-151 through 31-17-181.

The purpose of Sections 31-17-151 through 31-17-181 is to provide full and complete authority for the state, acting by and through the commission, for such temporary borrowings. No procedure or proceedings, publications, notices, consents, limitations, approvals, orders, acts or things, other than those required by Sections 31-17-151 through 31-17-181, shall be required for such temporary borrowings or to do any act or perform anything under Sections 31-17-151 through 31-17-181 except as otherwise may be prescribed in Sections 31-17-151 through 31-17-181. The powers conferred by Sections 31-17-151 through 31-17-181 shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by Sections 31-17-151 through 31-17-181 shall not affect the powers conferred by any other law. Sections 31-17-151 through 31-17-181 are remedial in nature and shall be liberally construed.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 178, eff from and after passage (approved November 24, 2004).

§ 31-17-169. Full and complete authority for all temporary borrowings.

This section and other applicable provisions of Sections 31-17-151 through 31-17-181, without reference to any other statute, shall be deemed full and complete authority for all such temporary borrowings by the state, and shall be construed as an additional and alternative method therefor.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 179, eff from and after passage (approved November 24, 2004).

§ 31-17-171. Nothing in Sections 31-17-151 through 31-17-181 to be construed as applicable to obligations other than those that are state-supported.

Nothing in Sections 31-17-151 through 31-17-181 shall be construed as to apply to or limit any debt obligation or related instrument of the state or any other issuers except those obligations or instruments which are or relate to state-supported debt.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 180, eff from and after passage (approved November 24, 2004).

§ 31-17-173. Sections 31-17-151 through 31-17-181 deemed to be full and complete authority for exercise of powers granted therein.

Sections 31-17-151 through 31-17-181 shall be deemed to be full and complete authority for the exercise of the powers herein granted, but Sections 31-17-151 through 31-17-181 shall not be deemed to repeal or to be in derogation of any existing law of the state.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 181, eff from and after passage (approved November 24, 2004).

§ 31-17-175. Notes to be fully negotiable and shall be "securities" within the meaning of the Uniform Commercial Code.

All notes sold and issued under Sections 31-17-151 through 31-17-181 shall be fully negotiable in accordance with their terms and shall be "securities" within the meaning of Article 8 of the Uniform Commercial Code, subject to the provisions of such notes pertaining to registration. It shall not be necessary to file financing statements or continuation statements to protect the lien and pledge granted by the state to the holders of any notes issued under Sections 31-17-151 through 31-17-181.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 182, eff from and after passage (approved November 24, 2004).

Cross References — Article 8 of the Uniform Commercial Code, see §§ 75-8-101 et seq.

§ 31-17-177. Notes and income therefrom exempt from state taxation.

All notes sold and issued under the provisions of Sections 31-17-151 through 31-17-181 and income therefrom shall be exempt from all taxation in the State of Mississippi.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 183, eff from and after passage (approved November 24, 2004).

§ 31-17-179. Severability.

If any one or more sections, clauses, sentences or parts of Sections 31-17-151 through 31-17-181 shall for any reason be questioned in any court and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of Sections 31-17-151 through 31-17-181, but shall be confined in its operations to the specific provisions so held invalid, and inapplicability or invalidity of any such section, clause, sentence or part shall not be taken to affect or prejudice in any way the remaining part or parts of Sections 31-17-151 through 31-17-181.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 184, eff from and after passage (approved November 24, 2004).

§ 31-17-181. Validation of notes.

Any notes sold and issued under the provisions of Sections 31-17-151 through 31-17-181 may, in the discretion of the commission, be validated in the Chancery Court of the First Judicial District of Hinds County, Mississippi, in the manner and with the force and effect provided now or hereafter by Chapter 13, Title 31, Mississippi Code of 1972, for the validation of municipal bonds.

HISTORY: Laws, 2004, 3rd Ex Sess, ch. 1, § 185, eff from and after passage (approved November 24, 2004).

CHAPTER 18.

VARIABLE RATE DEBT INSTRUMENTS

Sec.

31-18-1. Definitions.
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31-18-5. State supported debt issued as variable rate bond.
31-18-7. Issuance of variable rate refunding bonds by the state.
31-18-9. Commission's power of state-supported debt.
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31-18-23. Sections, clauses, or sentences questioned or adjudged unconstitutional.

§ 31-18-1. Definitions.

As used in this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Variable rate bonds" shall mean state-supported debt which bears interest at a rate or rates which vary from time to time and shall include variable rate refunding bonds.

(b) "Interest rate exchange or similar agreement" shall mean a written contract entered into by the state with a counterparty in connection with state-supported debt to provide for an exchange of payments based upon fixed and/or variable rates, shall include interest rates, caps, collars, floors and similar agreements and options on each of the foregoing, and shall be for exchanges in currency of the United States of America only with such terms determined by the commission to be in the financial best interest of the state.

(c) "State-supported debt" shall mean any bonds or notes, including bonds or notes issued to fund reserve funds and costs of issuance and refunding bonds or refunding notes, currently outstanding or authorized to be issued by the state for which the state is or will be constitutionally obligated to pay debt service or is or will be contractually obligated to pay debt service subject to an appropriation; however, this definition shall not apply to debt issued by the Mississippi Development Bank or similar state agencies or authorities.

(d) "Counterparty" shall mean the provider of or other party to an interest rate exchange or similar agreement.

(e) "State" shall mean the State of Mississippi.

(f) "Commission" shall mean the State Bond Commission of the state.

(g) "Variable rate debt instruments" shall mean variable rate bonds, variable rate refunding bonds and interest rate exchange or similar agreements which result in the state effectively paying interest at a rate or rates which vary from time to time.

(h) "Excluded agreements" shall mean the total notional amount of interest rate exchange or similar agreements entered into for the purpose of reducing, reversing or unwinding another interest rate exchange or similar agreement or eliminating a situation of risk or exposure under an existing interest rate exchange or similar agreement, including, but not limited to, a counterparty downgrade, default, or other actual or potential economic loss.

HISTORY: Laws, 2003, ch. 522, § 52 effective upon its passage, and approved by the Governor on April 19, 2003.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 31-18-3. Purpose.

The purpose of this chapter is to provide full and complete authority for the state, acting by and through the commission, to issue or enter into variable rate debt instruments. No procedure or proceedings, publications, notices, consents, limitations, approvals, orders, acts or things, other than those required by this chapter, shall be required to issue or enter into any variable rate debt instruments or to do any act or perform anything under this chapter except as otherwise may be prescribed in this chapter. The powers conferred by this chapter shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this chapter shall not affect the powers conferred by any other law. This chapter is remedial in nature and shall be liberally construed.

HISTORY: Laws, 2003, ch. 522, § 53 effective upon its passage, and approved by the Governor on April 19, 2003.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 31-18-5. State supported debt issued as variable rate bond.

(1) Notwithstanding any other provision of law to the contrary, any otherwise authorized state-supported debt may be issued as variable rate bonds. Except as otherwise provided in this chapter or when in conflict with the provisions in this chapter, such variable rate bonds shall be subject to the terms and provisions of the legislation authorizing the issuance of such state-supported debt.

(2) Variable rate bonds issued by the state pursuant to the provisions of subsection (1) of this section or Section 31-18-7 shall be issued pursuant to an authorizing resolution of the commission. Such variable rate bonds may be issued in one or more series, may bear such date or dates, may bear interest at such rate or rates, varying from time to time, not to exceed that allowed by law for the class of bonds being issued, may be in such denominations, may be

subject to such terms of redemption (with or without premium) may be sold at private sale with a competitive element (which sale shall be on such terms and in such manner as the commission shall determine) and may contain such other terms and covenants (including, without limitation, covenants for the security and better marketability of such variable rate bonds), as may be provided by resolution of the commission. Pursuant to the provisions of this chapter, the commission may enter into such agreements as may be necessary in connection with the issuance of such variable rate bonds.

HISTORY: Laws, 2003, ch. 522, § 54 effective upon its passage, and approved by the Governor on April 19, 2003.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2). The word "subsections" was changed to "subsection" following "pursuant to the provisions of" in the first sentence. The Joint Committee ratified the correction at its May 31, 2006, meeting.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 31-18-7. Issuance of variable rate refunding bonds by the state.

(1) This section and other applicable provisions of this chapter, without reference to any other statute, shall be deemed full and complete authority for the issuance of variable rate refunding bonds by the state, and shall be construed as an additional and alternative method therefor.

(2) The state, acting by and through the commission, may refund outstanding bonds through the issuance of variable rate refunding bonds. Any such refunding may be effected whether or not the bonds to be refunded shall have then matured or shall thereafter mature.

(3) Variable rate refunding bonds issued pursuant to this chapter may be secured by a pledge of: (a) the same source of security as the bonds to be refunded, or (b) such other security as the state may lawfully pledge, or both; all as may be provided by resolution of the commission.

HISTORY: Laws, 2003, ch. 522, § 55 effective upon its passage, and approved by the Governor on April 19, 2003; Laws, 2019, ch. 476, § 1, eff from and after July 1, 2019.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Amendment Notes — The 2019 amendment deleted former (4), which read: "At the time of the issuance of such variable rate refunding bonds, the commission shall find by resolution that at the time of such refunding, such refunding is expected to result in an overall net present value savings to maturity of not less than two percent (2%) of the bonds being refunded."

Cross References — Variable rate bonds issued under this section to be issued pursuant to an authorizing resolution of the commission, see § 31-18-5.

§ 31-18-9. Commission's power of state-supported debt.

In connection with state-supported debt, the commission shall have the power to:

(a) Enter into interest rate exchange or similar agreements with any person under such terms and conditions as the commission may determine, including, but not limited to, provisions as to default or early termination;

(b) Procure insurance, letters of credit or other credit enhancement with respect to agreements described in paragraph (a) of this section;

(c) Provide security for the payment or performance of its obligations with respect to agreements described in paragraph (a) of this section from such sources and with the same effect as is authorized by applicable law with respect to security for its bonds, notes or other obligations; however, any payment or performance of obligations with respect to agreements described in paragraph (a) of this section in connection with debt obligations which carry the full faith and credit of the state shall be subject to appropriation;

(d) Modify, amend, or replace, such agreements described in paragraph (a) of this section; and

(e) Because of the complexity of agreements described in paragraph (a) of this section, the commission may solicit the provision of such agreements on a competitive or negotiated basis with a competitive element included.

HISTORY: Laws, 2003, ch. 522, § 56 effective upon its passage, and approved by the Governor on April 19, 2003.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Cross References — Interest rate exchange or similar agreements limitations, see § 31-18-11.

§ 31-18-11. Interest rate exchange or similar agreements; limitations.

Any interest rate exchange or similar agreements entered into pursuant to Section 31-18-9 shall be subject to the following limitations:

(a) The counterparty thereto shall have credit ratings from at least one nationally recognized statistical rating agency that is within the two (2) highest investment grade categories and ratings which are obtained from any other nationally recognized statistical rating agencies shall also be within the three (3) highest investment grade categories, or the payment obligations of the counterparty shall be unconditionally guaranteed by an entity with such credit ratings;

(b) The written contract shall require that should the rating: (i) of the counterparty, if its payment obligations are not unconditionally guaranteed by another entity, or (ii) of the entity unconditionally guaranteeing its payment obligations, if so secured, fall below the rating required by paragraph (a) of this section, that the obligations of such counterparty shall be fully and continuously collateralized by direct obligations of, or obligations the principal and interest on which are guaranteed by the United States of America with a net market value of at least one hundred two percent (102%) of the net market value of the contract of the authorized insurer and such collateral shall be deposited as agreed to by the commission;

(c) The counterparty has a net worth of at least One Hundred Million Dollars ($100,000,000.00), or the counterparty's obligations under the interest rate exchange or similar agreement are guaranteed by a person or entity having a net worth of at least One Hundred Million Dollars ($100,000,000.00);

(d) The total notional amount of all interest rate exchange or similar agreements for the state to be in effect shall not exceed an amount equal to twenty percent (20%) of the total amount of state-supported debt outstanding as of the initial date of entering into each new agreement; however, such total notional amount shall not include any excluded agreements;

(e) No interest rate exchange or similar agreement shall have a maturity exceeding the maturity of the related state-supported debt;

(f) Each interest rate exchange or similar agreement shall be subject to a finding by the commission that its terms and conditions reflect a fair market value of such agreement as of the date of its execution, regardless of whether such agreement was solicited on a competitive or negotiated basis with a competitive element; and

(g) Each interest rate exchange or similar agreement, including the modification or termination thereof, shall be subject to the approval of the commission or its designee.

HISTORY: Laws, 2003, ch. 522, § 57 effective upon its passage, and approved by the Governor on April 19, 2003.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 31-18-13. Initial date variable rate debt instruments.

(1) As of the initial date of each issuance of variable rate debt instruments, the total of the principal and notional amounts of such variable rate debt instruments outstanding and in effect shall not exceed an amount equal to twenty percent (20%) of the total principal amount of state-supported debt outstanding.

(2) The limitation contained in subsection (1) of this section shall not include any excluded agreements.

HISTORY: Laws, 2003, ch. 522, § 58 effective upon its passage, and approved by the Governor on April 19, 2003.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected a typographical error in subsection (2). The subsection "(2)" was changed to subsection "(1)" following "The limitation contained in subsection." The Joint Committee ratified the correction at its May 31, 2006, meeting.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 31-18-15. Debt obligation or related instrument.

Nothing in this chapter shall be construed as to apply to or limit any debt obligation or related instrument of the state or any other issuers except those obligations or instruments which are or relate to state-supported debt.

HISTORY: Laws, 2003, ch. 522, § 59 effective upon its passage, and approved by the Governor on April 19, 2003.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 31-18-17. Excercise of power.

This chapter shall be deemed to be full and complete authority for the exercise of the powers herein granted, but this chapter shall not be deemed to repeal or to be in derogation of any existing law of this state.

HISTORY: Laws, 2003, ch. 522, § 60 effective upon its passage, and it was approved by the Governor on April 19, 2003.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 31-18-19. Issuance of variable rate bonds.

All variable rate bonds issued under this chapter shall be fully negotiable in accordance with their terms and shall be "securities" within the meaning of Article 8 of the Uniform Commercial Code, subject to the provisions of such bonds pertaining to registration. It shall not be necessary to file financing statements or continuation statements to protect the lien and pledge granted by a governmental unit to the holders of any variable rate bonds issued under this chapter.

HISTORY: Laws, 2003, ch. 522, § 61 effective upon its passage, and approved by the Governor on April 19, 2003.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Cross References — Article 8 of the Uniform Commercial Code, see §§ 75-8-101 et seq.

§ 31-18-21. Provisions of issuance; variable rate bonds.

All variable rate bonds issued under the provisions of this chapter and income therefrom shall be exempt from all taxation in the State of Mississippi.

HISTORY: Laws, 2003, ch. 522, § 62 effective upon its passage, and it was approved by the Governor on April 19, 2003.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 31-18-23. Sections, clauses, or sentences questioned or adjudged unconstitutional.

If any one or more sections, clauses, sentences or parts of this chapter shall for any reason be questioned in any court and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this chapter, but shall be confined in its operations to the specific provisions so held invalid, and inapplicability or invalidity of any such section, clause, provision or part shall not be taken to affect or prejudice in any way the remaining part or parts of this chapter.

HISTORY: Laws, 2003, ch. 522, § 63 effective upon its passage, and approved by the Governor on April 19, 2003.

Editor's Notes — Sections 31-18-1 through 31-18-23 were codified at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

CHAPTER 19.

PUBLIC DEBTS

Sec.

31-19-1. Serial payment bonds only may be issued.
31-19-3. Penalty on officials for violations.
31-19-5. Investment of certain funds.
31-19-7. Ratification of bonds signed by officials not in office at the time of sale or delivery.
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31-19-29. Compromise of doubtful claims.
31-19-31. Bonds to the federal government for state hospitals.
31-19-33. Limitation of actions for payment of bonds and coupons.

§ 31-19-1. Serial payment bonds only may be issued.

No county or municipality shall issue any bonds except on the serial payment plan.

HISTORY: Codes, Hemingway's 1921 Supp. § 6662d; 1930, § 5980; 1942, § 4322; Laws, 1918, ch. 209.

Cross References — Details of county bonds, see § 19-9-7.
Maturities and interest on county bonds, see § 19-9-19.
Maturities and interest on municipal bonds, see § 21-33-315.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 165 et seq.

§ 31-19-3. Penalty on officials for violations.

For failure to comply with the provisions of this chapter by any officer, any taxpayer may institute a suit for damages on the bond of such official who is required to give a bond; and in addition thereto, such official may be punished for such failure as for a misdemeanor, and on conviction be fined not more than Five Hundred Dollars ($500.00) or imprisoned in the county jail for six (6) months, or both.

HISTORY: Codes, Hemingway's 1921 Supp. § 6662e; 1930, § 5981; 1942, § 4323; Laws, 1918, ch. 209.

Cross References — Issuance of bonds by county or regional railroad authorities, see § 19-29-29.

Penalty on member of the governing body of municipality for unauthorized appropriation, see § 21-39-15.

Civil remedy for bondholders where officials failed to comply with the duties under this chapter, see § 31-19-15.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The right of a taxpayer to bring suit on behalf of a county or the public is only such as is authorized by statute; the power extends only to suits for money paid to an object not authorized by law, and not for paying out money to an object authorized by law in violation of statutory directions. Mississippi Road Supply Co. v. Hester, 185 Miss. 839, 188 So. 281, 1939 Miss. LEXIS 158 (Miss. 1939), but see, Canton Farm Equipment, Inc. v. Richardson, 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

With respect to the right of a taxpayer to bring suit on behalf of the public, the taxpayer must bring his bill on behalf of the public, and invite the other taxpayers to join in the suit, and the bill must have proper allegations showing the suit is brought on behalf of the general public, and a failure to secure action by the public officers in the public's behalf, in which latter connection it is not sufficient merely to request public officers to bring suit, or to state that the matter was notorious and that the officer or officers knew of the fact, but the taxpayer must present to the officer sufficient facts and data to convince the legal mind that the facts warrant institution of the suit. Mississippi Road Supply Co. v. Hester, 185 Miss. 839, 188 So. 281, 1939 Miss. LEXIS 158 (Miss. 1939), but see, Canton Farm Equipment, Inc. v. Richardson, 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

RESEARCH REFERENCES

Am. Jur.

74 Am. Jur. 2d, Taxpayers' Actions § 32.

§ 31-19-5. Investment of certain funds.

Any funds received from the sale of bonds, notes, or certificates of indebtedness heretofore or hereafter sold by the State of Mississippi or any agency or department thereof or by any county, municipality, road district, levee district, development district, utility district, school district, drainage district or other entity authorized by law to issue bonds, notes, or certificates of indebtedness, which are not immediately required for disbursement for the purpose for which issued, may be invested by the proper authorities in any direct obligation issued by or guaranteed in full as to principal and interest by the United States of America or in certificates of deposit issued by or through a qualified depository of the State of Mississippi as approved by the State Treasurer, maturing or being redeemable by the holder on or prior to the date upon which such funds will be required for disbursement and bearing interest at a rate per annum not less than a simple interest rate numerically equal to the average bank discount rate on United States Treasury bills of comparable maturity or the current rate of interest paid on certificates of deposit or on United States Treasury obligations of comparable maturities, whichever is the higher, provided, however, that the proceeds from the sale of bonds issued pursuant to Sections 57-1-131 through 57-1-145, Mississippi Code of 1972, or Chapter 3 of Title 57, Mississippi Code of 1972, may be invested in certificates of deposit issued by or through qualified depositories of the State of Mississippi bearing interest at any rate per annum which may be mutually agreed upon, but in no case shall said rate be less than such average bank discount rate.

Funds received pursuant to this section shall be invested as heretofore described or may be invested, pursuant to rules promulgated by the State Treasurer, in obligations described in Section 27-105-33(d), Mississippi Code of 1972; however, funds described in this section may not be invested in securities of, or interests in, any open-end or closed-end management-type investment company or investment trust, such as those described in Section 27-105-33(e).

HISTORY: Codes, 1942, § 4345; Laws, 1942, ch. 192; Laws, 1948, ch. 212; Laws, 1971, ch. 453, § 1; Laws, 1973, ch. 434, § 1; Laws, 1988, ch. 393, § 2; Laws, 1989, ch. 544, § 164; Laws, 1989, ch. 540, § 3; Laws, 2007, ch. 426, § 5, eff from and after passage (approved Mar. 22, 2007).

Cross References — Investment of surplus funds by board of supervisors, see § 19-9-29.

Investment of surplus funds by municipality, see § 21-33-323.

Investment of surplus school district funds by municipalities or counties, see § 37-59-43.

Investment in direct obligations of United States of America to include interests in open-end or closed-end management type investment company or investment trust, see § 91-13-8.

OPINIONS OF THE ATTORNEY GENERAL

Bond proceeds issued under Section 57-10-401 et seq. are, by virtue of Section 57-10-433, not subject to State Treasurer's Regulation Number 1. Rule, March 17, 1994, A.G. Op. #94-0123.

A school district may purchase such securities and obligations as allowed by state law through brokers, who may charge an agreed fee for their services, provided the fee is found by the school board to be reasonable and commensurate with those services; there is no authority for a school district to pay more than the market value of securities by means of a mark up by a dealer. Turner, August 28, 1998, A.G. Op. #98-0475.

§ 31-19-7. Ratification of bonds signed by officials not in office at the time of sale or delivery.

Whenever, pursuant to statutory authority, bonds of the State of Mississippi, or of any county, municipality, road district, supervisors district, school district, drainage district, or other taxing district therein, have been or shall hereafter be prepared and signed by the officials designated to sign the bonds by statute or by the proceedings authorizing the issuance of the bonds, who were or are in office at the time of such signing but who may have ceased to be such officials prior to the sale and delivery of such bonds or who may not have been in office on the date such bonds may bear, the signatures of such officials upon such bonds and the coupons thereto attached are valid and sufficient for all purposes and shall have the same effect as if the persons so officially signing such bonds had remained in office until delivery of the same to the purchasers or had been in office on the date such bonds may bear, although the term of office of such persons or any of them may have expired or they may otherwise have ceased to be such officers before such delivery or although the term of office of such persons or any of them may not have commenced until a date subsequent to the date such bonds may bear. All such bonds heretofore or hereafter executed and heretofore or hereafter sold and delivered are hereby ratified, validated, and confirmed, notwithstanding any change in office which may have taken place subsequently to the execution of the bonds and coupons and prior to the delivery thereof or any change in office which may have taken place subsequently to the date which such bonds may bear and prior to the execution and delivery thereof; and such bonds shall be valid and binding obligations of said state, county, municipality, road district, supervisors district, school district, drainage district, or other taxing district, as the case may be.

HISTORY: Codes, Hemingway's 1921 Supp. § 6662y; 1930, § 5989; 1942, § 4349; Laws, 1920, ch. 221; Laws, 1934, ch. 133.

RESEARCH REFERENCES

ALR.

Payment of attorneys' services in defending action brought against officials individually as within power or obligation of public body. 47 A.L.R.5th 553.

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations § 170.

§ 31-19-9. Payment of county bonds and coupons at maturity.

Whenever any county, road district, consolidated school district, rural school district, or other taxing districts controlled by the board of supervisors which has heretofore issued or shall hereafter issue bonds or other obligations of which principal and interest shall be payable at some bank or trust company, or at some office other than the county treasury, it shall be the duty of the clerk of the board of supervisors on the allowance of said board to issue a warrant against the proper fund for the amount of principal and interest due and to forward exchange to the paying agent. Said exchange shall be sufficient in amount to pay said principal and interest and a reasonable fee to said paying agent for handling same, said fee not to exceed one-half of one percent (½ of 1%) of the amount of coupons paid and one-eighth of one percent (⅛ of 1%) of the amount of bonds paid. Said exchange shall be forwarded in time to reach the paying agent at least five (5) days prior to the date on which said principal and interest shall become due, and the receipt of the paying agent for said remittance shall be sufficient voucher in the hands of said clerk for said remittance until the bonds or coupons shall have been paid and cancelled and returned to said clerk.

HISTORY: Codes, Hemingway's 1921 Supp. § 6662z; 1930, § 5990; 1942, § 4350; Laws, 1920, ch. 233; Laws, 1948, ch. 213.

Cross References — Issuance of county bonds and notes generally, see §§ 19-9-1 et seq.
Refunding of bonds upon surrender, see § 31-15-21.
Retirement of bonds by purchase thereof, see § 31-17-45.
Limitation of actions for payment of bonds and coupons, see § 31-19-33.
School district bonds generally, see §§ 37-59-1 et seq.

JUDICIAL DECISIONS

1. In general.

Money placed in the hands of a bank pursuant to this provision are not a general deposit, and although for its convenience the bank commingles the bonds with its own, restitution upon the bank's insolvency may be enforced. Woolley v. Natchez, 89 F.2d 937, 1937 U.S. App. LEXIS 3635 (5th Cir. Miss. 1937).

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 339 et seq.

CJS.

81A C.J.S., States § 448.

§ 31-19-11. Allowance for remittance.

Said allowance for said remittances shall be made by the board of supervisors at the regular meeting of said board held at least thirty (30) days preceding the date on which said bonds and coupons shall become due.

HISTORY: Codes, Hemingway's 1921 Supp. § 6662a1; 1930, § 5991; 1942, § 4351; Laws, 1920, ch. 233.

§ 31-19-13. Payment of municipal or drainage district bonds.

Where said obligations above referred to shall have been issued or shall hereafter be issued by a city, town, or village, or municipal separate school district, it shall be the duty of the board of mayor and aldermen or the board of commissioners, to make the allowance above referred to at least thirty (30) days prior to the maturity of such indebtedness; and the clerk of said board shall forward the funds as above provided for. In case of a drainage district, the commissioners shall make the allowance, and the secretary-treasurer of the district shall forward the funds as above provided for.

HISTORY: Codes, Hemingway's 1921 Supp. § 6662b1; 1930, § 5992; 1942, § 4352; Laws, 1920, ch. 233.

Cross References — Municipal bonds generally, see §§ 21-33-301 et seq.
Payment of county bonds at maturity, see § 31-19-9.
Limitation of actions for payment of bonds and coupons, see § 31-19-33.
School district bonds generally, see §§ 37-59-1 et seq.
Borrowing power of drainage district, see § 51-29-63.
Sale of drainage district bonds, see § 51-31-69.

JUDICIAL DECISIONS

1. In general.

Money placed in the hands of a bank pursuant to this provision are not a general deposit, and although for its convenience the bank commingles the bonds with its own, restitution upon the bank's insolvency may be enforced. Woolley v. Natchez, 89 F.2d 937, 1937 U.S. App. LEXIS 3635 (5th Cir. Miss. 1937).

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 339 et seq.

CJS.

81A C.J.S., States § 448.

§ 31-19-15. Remedy of bondholders.

For failure or refusal to comply with the foregoing provisions, any official charged with any duties under Sections 31-19-9 through 31-19-13 shall be liable on his official bond to any holder of any bond or coupon for any and all expenses incident to the collection of same, and for all damages which may have accrued on account of the failure to pay same promptly at the place of payment at maturity.

HISTORY: Codes, Hemingway's 1921 Supp. § 6662c1; 1930, § 5993; 1942, § 4353; Laws, 1920, ch. 233.

Cross References — Penalty for failure to comply with the provisions of this chapter, see § 31-19-3.

Limitation of actions for payment of bonds and coupons, see § 31-19-33.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 4353] does not provide for liability of drainage district commissioners on account of their failure to assess sufficient benefits for the payment of all bonds and coupons of two series, or because they caused part of the taxes against the benefits assessed to be paid to the holders of the bonds of the second series without first issuing a warrant in that behalf, especially where the bonds and coupons so paid would have been paid on an equal basis with those of the first series if sufficient benefits had been assessed. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784, 1946 Miss. LEXIS 220 (Miss. 1946).

Neither commissioners of drainage district personally, nor the sureties on their official bonds, were liable to holders of unpaid bonds of first series issued by the district for paying bonds of the second series which were invalid because additional benefits had not been assessed against the land as a basis for the issuance of the second bond, where the commissioners acted ministerially in good faith, since the acts of the commissioners were chargeable to the board in its official capacity rather than to the members individually; Moreover, they were not liable on the theory that the funds of the district constituted trust funds exclusively for the payment of the bonds of the first issue. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784, 1946 Miss. LEXIS 220 (Miss. 1946).

Assignee of holder of loan warrants issued by county under authority of special statute held not entitled to recover from members of board of supervisors for attorney's fees incurred in action to recover amount of warrants because of board's failure to levy tax as authorized by statute, where statute did not impose any duty upon board members as individuals or any individual liability for board's defaults, since boards of supervisors are not mere "ministerial" agents of state, and board's failure to levy tax was a failure in its corporate capacity. State ex rel. Bank of Commerce & Trust Co. v. Forbes, 179 Miss. 1, 174 So. 67, 1937 Miss. LEXIS 12 (Miss. 1937).

§ 31-19-17. Outstanding bonds may be registered.

Any and all persons holding or owning any outstanding and unmatured State of Mississippi bonds may present the same to the auditor of public accounts, and it shall be the duty of such auditor to register such bonds in a book to be kept by him for that purpose in such a manner that the owner of said bonds may be identified if the said bonds should be lost or stolen; and in like manner to keep a record of all transfers of such bonds so reported to him.

HISTORY: Codes, 1930, § 5994; 1942, § 4354; Laws, 1922, ch. 298.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Retirement of state bonds by state bond commission, see § 31-17-3.

Registration of drainage district bonds, see § 51-29-65.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations § 12.

§§ 31-19-19 through 31-19-23. Repealed.

Repealed by Laws, 1986, ch. 317, eff from and after passage (approved March 13, 1986).

§ 31-19-19. [Codes, 1942, § 4355; Laws, 1938, ch. 295; Laws, 1962, ch. 500, § 1]

§ 31-19-21. [Codes, 1942, § 4356; Laws, 1938, ch. 295; Laws, 1962, ch. 500, § 2; Laws, 1970, ch. 319, § 1]

§ 31-19-23. [Codes, 1942, § 4357; Laws, 1938, ch. 295; Laws, 1962, ch. 500, § 3]

Editor's Notes — Former § 31-19-19 provided for tabulation of bond issues filed with state auditor.

Former § 31-19-21 required certain reprots to be furnished and auditor to maintain register.

Former § 31-19-23 provided for penalties for failure to report.

§ 31-19-25. Sale of bonds to be advertised.

All bonds issued pursuant to any laws of this state and hereafter sold by the governing authority of or on behalf of any county, road district, school district, drainage district or other political subdivision or instrumentality of this state shall be advertised for sale on sealed bids, which may be submitted in electronic form, or at public auction. Such advertisement shall be published at least two (2) times in a newspaper published in the county in which the political subdivision or instrumentality is situated, and if no newspaper is published in such county, then in a newspaper published in an adjoining county; with respect to a political subdivision or instrumentality which is composed of more than one (1) county, such advertisement shall be published at least two (2) times in a newspaper having a general circulation in each county all or a portion of which is part of the political subdivision or instrumentality. The first publication in each case shall be made at least ten (10) days preceding the date fixed for the reception of bids, and such notice shall give the time and place of sale.

The governing authority may reject any and all bids, whether so stated in the notice of sale or not. If the bonds are not sold pursuant to such advertisement, they may be sold by the governing authority by private sale at any time within sixty (60) days after the date advertised for the reception of bids; but no such private sale shall be made at a price less than the highest bid which shall have been received pursuant to such advertisement. If not so sold at private sale, said bonds shall be readvertised in the manner herein prescribed.

Every bid for the purchase of any of such bonds shall be accompanied by a wire transfer or a cashier's check, certified check or exchange, payable to the proper governing authority, issued or certified by a bank in the amount of not less than two percent (2%) of the par value of the bonds offered for sale, as a guaranty that the bidder will carry out his contract and purchase the bonds if the bid is accepted. If the successful bidder fails to purchase the bonds pursuant to his bid and contract, the amount of such good faith check shall be retained by the governing authority and covered into the proper fund as liquidated damages for such failure.

This section shall not apply to the sale of bonds by the State of Mississippi through the State Bond Commission or the sale of bonds or any other indebtedness incurred by a county in connection with a project as defined under Section 57-75-5(f)(xxviii) or Section 57-75-5(f)(xxix).

A failure to comply with any provision of this section shall not invalidate such bonds, but any member of the governing board, commission or other governing authority who shall willfully violate any of said provisions and shall willfully fail to give the notices herein required shall be liable personally and on his official bond for a penalty in each case of Five Hundred Dollars ($500.00) and, in addition thereto, for all financial loss that may result to the county, municipality, road district, school district, drainage district or other political subdivision or instrumentality of the state or county resulting from such willful failure to comply herewith. Such penalty and damages may be recovered by suit of the Attorney General, a district attorney or of any citizen of such county or other political subdivision in any court of competent jurisdiction, for the use and benefit of the county or other such political subdivision or instrumentality.

HISTORY: Codes, 1942, § 4357-01; Laws, 1946, ch. 325, §§ 1, 2; Laws, 1987, ch. 434; Laws, 2013, 1st Ex Sess, ch. 1, § 11; Laws, 2016, 1st Ex Sess, ch. 1, § 15, eff from and after passage (approved Feb. 8, 2016); Laws, 2020, ch. 480, § 1, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in the first sentence of the first paragraph, inserted "which may be submitted in electronic form"; and in the first sentence of the third paragraph, inserted "a wire transfer or" and deleted "located in this state" following "issued or certified by a bank."

Cross References — Applicability of this section to issuance, management, and sale of bonds by the board of supervisors of a county in connection with the establishment of an economic development district, see § 19-5-99.

Issuance of county bonds generally, see § 19-9-1 et seq.

Issuance of municipal public utility bonds, see § 21-27-23.

Details of bond sales to establish, maintain and operate municipally-owned utility system, see § 21-27-45.

Bond issue for public utilities system in municipalities of more than 100,000 population, see § 21-27-71.

Issuance of bonds by municipality under the Metropolitan Area Waste Disposal Act, see § 21-27-179.

Issuance of municipal bonds generally, see §§ 21-33-301 et seq.

Provision that bonds issued under the Tax Increment Financing Act shall be sold for not less than par value plus accrued interest at public sale in the manner provided by this section, see § 21-45-9.

Sale of bonds for improvement, development and maintenance of sixteenth section lands under sealed bid procedure at public sale, see § 29-3-169.

General penalty for failure to comply with provisions of this chapter, see § 31-19-3.

Sale of bonds for agricultural high schools, see § 37-27-65.

Applicability of this section to notes or negotiable instruments of a junior college district, see § 37-29-103.

Issuance of negotiable notes or bonds by school board, see § 37-41-91.

School district bonds generally, see §§ 37-59-1 et seq.

Inapplicability of this section to the borrowing of money by school boards for purpose of making or purchasing certain capital improvements, see § 37-59-105.

Bond issue for improving athletic stadium, see § 37-119-7.

Interest on community hospital bonds and details and sale of bonds, see § 41-13-21.

Sale of bonds issued by a joint water management district, see § 51-8-39.

Details of bonds relating to the Pearl River Basin Development District, see § 51-11-23.

Sale of bonds for the Pat Harrison Waterway District, see § 51-15-133.

Form of drainage district bonds, see § 51-29-63.

Sale of drainage district bonds, see § 51-31-69.

Sale of bonds for port or harbor improvements, see § 59-7-509.

Issuance of bonds for county and municipal contributions to aid in construction of state highways, see § 65-1-81.

Application of this section to the sale of bonds to finance the establishment of stations for the repair and maintenance of public roads, see § 65-7-92.

Issuance of electric power bonds by municipalities and joint agencies, see § 77-5-739.

Advertisement and sale of bonds issued by the Municipal Gas Authority of Mississippi, see § 77-6-31.

JUDICIAL DECISIONS

1. In general.

The town has the authority to procure and pay for necessary legal services and to sell its bonds after the same had been authorized by the qualified electors and election called for such purpose, and to enter into a contract with the purchaser of such bonds upon such terms as the town and the purchaser may have agreed upon. J. S. Love Co. v. Carthage, 218 Miss. 11, 65 So. 2d 568, 1953 Miss. LEXIS 511 (Miss. 1953).

There is nothing in the statutes which authorize a municipality to employ an agent to sell bonds, or to enter into a pre-election contract for the sale of such bonds, or to delegate to a group of investment bankers or a group experienced in the securities business generally and in the field of revenue bonds especially, the power and authority to procure for the municipality necessary legal and engineering services required in connection with the construction of public utility improvements and to pay a fee therefor. J. S. Love Co. v. Carthage, 218 Miss. 11, 65 So. 2d 568, 1953 Miss. LEXIS 511 (Miss. 1953).

Assuming that the board of supervisors were derelict in respect to notice of sale, this dereliction would in no way validate county road bonds. Coleman v. Thompson, 216 Miss. 867, 63 So. 2d 832, 1953 Miss. LEXIS 709 (Miss. 1953).

In the exercise of the powers granted by statute with respect to constructing and maintaining waterworks and sewerage systems, the municipality may employ civil engineers to make the necessary surveys and prepare the necessary plans and specifications, and to supervise the work after the awarding of contracts; it may employ attorneys to prepare the necessary orders and resolutions, to supervise the enactment of other necessary legal proceedings for the issuance and sale of bonds, and to give legal opinions as to the validity of the bonds; and it may pay for such engineering and legal services and other incidental expenses connected with the issuance and sale of the bonds and the construction of such public works out of the proceeds of the sale of the bonds, or perhaps out of the general fund of the municipality. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

Under this statute [Code 1942, § 4357-01], there is no room for the services of an underwriter in the sale of municipal bonds, and the governing authorities of a municipality have no power to enter into a contract of any kind for the payment of an underwriter's fee or commission to investment bankers for an underwriter's guarantee of the sale of municipal bonds, or for the purpose of procuring a purchaser for such bonds prior to the advertisement for and receipt of bids, or to enter into a pre-election conditional sales contract for the sale of such bonds. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

The governing authorities of a municipality have no right to delegate to a group of investment bankers the power and authority to procure for the municipality the necessary and legal engineering services which may be required to enable the municipality to issue and sell its revenue bonds and to construct the public utility improvements contemplated. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 193 et seq.

15A Am. Jur. Legal Forms 2d, Public Securities and Obligations, § 214:54 (notice of sale of public bonds).

CJS.
81A C.J.S., States §§ 451-453.

§ 31-19-27. Doubtful claims defined.

A doubtful claim of the state, or of the county, city, town, village, or levee board is one for which judgment has been rendered and for the collection of which the ordinary process of law has been ineffectual; debts due by drainage districts or other taxing districts or sinking funds to counties under the Rehabilitation Act of 1928, being Chapter 88 of the Laws of 1928, and Chapter 16 of the Acts of the Special Session of 1931; those debts due counties by drainage districts, which the reconstruction finance corporation has heretofore refused to refinance; debts due for sixteenth section township school fund loans made to churches, where the board of supervisors finds that the value of the security given therefor is insufficient or inadequate to pay or satisfy the principal and interest of said loan, and when the church repays the principal of said loan; and debts due by counties and townships to drainage districts for drainage district assessments or taxes levied and assessed upon sixteenth section lands.

HISTORY: Codes, 1892, § 1572; 1906, § 1680; Hemingway's 1917, § 1427; 1930, § 5995; 1942, § 4385; Laws, 1934, ch. 204; Laws, 1938, ch. 344; Laws, 1946, ch. 241, § 1; Laws, 1950, ch. 254, § 1.

Cross References — Constitutional provision for compromise of doubtful claims, see Miss. Const. Art. 4, § 100.

Sixteenth section and lieu lands generally, see §§ 29-3-1 et seq.

§ 31-19-29. Compromise of doubtful claims.

The Governor, on the advice of the Attorney General or chairman of the State Tax Commission, may, upon application of the defendant or debtor proposing a compromise, settle and compromise any doubtful claim of the state, or of any county, city, town, or village, or of any levee board against such defendant or debtor, upon such terms as he may deem proper, the board of supervisors in the case of a county, and the municipal authorities in the case of a city, town or village, and the levee board in the case of a claim of a levee board, concurring therein. The Governor, upon application of a drainage district having obligations outstanding to a county under the provisions of Chapter 88, Laws of 1928, and Chapter 16, Laws of the Extraordinary Session of 1931, or obligations which the reconstruction finance corporation has heretofore refused to refinance, may settle and compromise any claim, debt or obligation that said drainage district may owe any county in the State of Mississippi for money loaned said district under the provisions of said Chapter 88, Laws of 1928, or any other claim, debt or obligation that said drainage district may owe the county which the reconstruction finance corporation has heretofore refused to finance, if the board of supervisors of said county concurs in the application of the drainage district. The Governor, upon application by the board of supervisors for any taxing districts of said county or sinking funds of said county under the control and supervision of said board of supervisors having obligations outstanding and due to said county under the provisions of Chapter 88, Laws of 1928, and Chapter 16, Laws of the Extraordinary Session of 1931, may settle and compromise any claim, debt, or obligation that said taxing districts or sinking funds may owe said county for money loaned said taxing districts or sinking funds under the provisions of said Chapter 88, Laws of 1928; and provided that the Governor, on the advice of the Attorney General, and upon application of a church owing a sixteenth section township school fund loan, may settle and compromise such debt or obligation if the board of supervisors of the said county concurs in the application of the said church. The Governor may, on the advice of the Attorney General, in like manner compromise and settle a claim of a drainage district for unpaid assessments or taxes upon sixteenth section lands upon application of the board of supervisors wherein such sixteenth section is situated, if the commissioners of the drainage district concur therein.

HISTORY: Codes, 1892, § 1573; 1906, § 1681; Hemingway's 1917, § 1428; 1930, § 5996; 1942, § 4386; Laws, 1934, ch. 205; Laws, 1938, ch. 339; Laws, 1946, ch. 241, § 2; Laws, 1950, ch. 254, § 2; Laws, 1962, ch. 588, § 19, eff from and after Jan. 1, 1964.

Editor's Notes — Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

Cross References — Constitutional authority for compromise of doubtful claims, see Miss. Const. Art. 4, § 100.

Sixteenth section and lieu lands generally, see §§ 29-3-1 et seq.

Limitation of actions for payment of bonds and coupons, see § 31-19-33.

JUDICIAL DECISIONS

1. In general.

A compromise judgment for cutting timber held to be binding on the state. Robertson v. H. Weston Lumber Co., 124 Miss. 606, 87 So. 120, 1920 Miss. LEXIS 547 (Miss. 1920).

RESEARCH REFERENCES

ALR.

Power of city, town, or county or its officials to compromise claim. 15 A.L.R.2d 1359.

Power to remit, release, or compromise tax claims. 28 A.L.R.2d 1425.

§ 31-19-31. Bonds to the federal government for state hospitals.

Any bonds hereafter issued to the United States of America to finance in part the construction, erection, or equipment of any state hospital of the State of Mississippi, or any series, class, or installment of such bonds may bear interest at such rate or rates of interest not exceeding four per centum (4%) per annum and may be subject to such terms of redemption with or without premium as the commission or officials authorized to issue such bonds may determine, notwithstanding that such bonds may be part of a series, class, or installment of bonds bearing a greater or less rate of interest, and notwithstanding that such bonds may be a part of any series, class, or installment containing other and different terms of redemption.

HISTORY: Codes, 1942, § 4384; Laws, 1934, ch. 145.

§ 31-19-33. Limitation of actions for payment of bonds and coupons.

Action against the state or any county, municipality, school district or political subdivision of the State of Mississippi for the payment of any bond issued thereby or for the payment of any coupon representing interest on such bond shall be commenced within twenty (20) years after the maturity date of such bond.

HISTORY: Laws, 1984, ch. 309, eff from and after passage (approved April 4, 1984).

CHAPTER 21.

REGISTERED BONDS

Sec.
31-21-1. Citation of chapter.
31-21-3. Definitions.
31-21-5. Additional powers granted in connection with issuance of bonds.
31-21-7. Construction of chapter.

§ 31-21-1. Citation of chapter.

This chapter shall be known and may be cited as the "Registered Bond Act."

HISTORY: Laws, 1983, ch. 494, § 1, eff from and after passage (approved April 11, 1983).

Editor's Notes — Laws of 1983, ch. 494, § 2, effective from and after passage (approved April 11, 1983), provides as follows:

"SECTION 2. The Legislature hereby finds and determines that:

"(a) On September 3, 1982, the President of the United States signed the Tax Equity and Fiscal Responsibility Act of 1982 ('TEFRA');

"(b) TEFRA provides, among other things, that except in very limited cases the interest income on all bonds and other securities issued by states and their political subdivisions and other public bodies shall be subject to federal income taxation unless such bonds are issued in registered form;

"(c) It is imperative to the interests of the state at large that the state and all of its political subdivisions and other public bodies shall have all of those powers which may be necessary or helpful to them to comply with TEFRA and thereby reduce the cost of borrowing money for the benefit of the people of this state;

"(d) The municipal bond market may develop customs, practices and requirements that bonds in registered form must be subject to certain authentication, registration, transfer, payment and similar provisions in order to be readily acceptable in the municipal bond market;

"(e) In many instances, the laws of this state do not grant the state and its political subdivisions and other public bodies the power to issue bonds in registered or book-entry form and to provide bonds with execution, authentication, registration, transfer, payment and other provisions needed for ready acceptance in the municipal bond market; and

"(f) It is vital to the interest of the state at large that the state and all of its political subdivisions and other public bodies be granted the additional and supplemental powers conferred herein in order to have the ability of complying with the provisions of TEFRA and of responding to changes in the customs, practices and requirements of the municipal bond market."

Cross References — General terms and conditions as to bonds, see § 29-3-169.

Boards of supervisors may issue bonds for agricultural high schools, and agricultural high school-junior colleges, 37-27-65.

Details of bonds; supplemental powers conferred in issuance of bonds, see § 37-59-25.

Board may borrow money to construct or improve or add to existing facilities, see § 37-101-91.

Refunding bonds, see § 37-101-95.

Development of plans for Water Management Districts, see § 51-7-15.

Authority to borrow money and issue bonds, see § 51-7-27.

Provision that a joint water management district may issue bonds pursuant to the

Registered Bond Act (§§ 31-21-1 through 31-21-7), see § 51-8-37.

Details of bonds; supplemental powers conferred in issuance of bonds, see § 51-9-135.

Details of bonds; supplemental powers conferred in issuance of bonds relating to the Tombigbee River Valley Water Management District, see § 51-13-125.

Details of bonds; supplemental powers conferred in issuance of bonds relating to the Pat Harrison Waterway District, see § 51-15-133.

Creation of drainage districts, see § 51-29-5.

Commissioners may borrow money within drainage districts, see § 51-29-63.

Levy to provide estimated funds within drainage districts with County Commissioners, see § 51-31-61.

Bond issue to fund legal indebtedness, see § 51-33-37.

Issuance of bonds for local governments freight rail service projects pursuant to Registered Bond Act, see § 57-44-15.

§ 31-21-3. Definitions.

As used herein, the following words and terms shall have the following meanings, unless a different meaning clearly appears from the context:

(a) "Act" means this Registered Bond Act;

(b) "Bonds" means any bonds, interim certificates, notes or other evidences of indebtedness;

(c) "Law" means any law or statute of this state, whether general, special, private or local;

(d) "Political subdivision" means any county, municipality, governmental district or unit, instrumentality of the state, public corporation, body corporate, commission, board, agency, authority, public body, politic or other public entity authorized by any law to issue bonds; and

(e) "State" means the State of Mississippi.

HISTORY: Laws, 1983, ch. 494, § 3, eff from and after passage (approved April 11, 1983).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (b). The word "mean" was changed to "means" so that "(b) 'Bonds' mean any bonds, interim certificates, notes..." will read as "(b) 'Bonds' means any bonds, interim certificates, notes..." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Cross References — Applicability of this section to issuance of bonds for construction and improvement of institutions of higher learning, see §§ 37-101-91 et seq., and 51-33-27.

Applicability of this section to bonds issued for improvement of drainage, etc., see §§ 51-29-63, 51-31-61, 51-33-37.

§ 31-21-5. Additional powers granted in connection with issuance of bonds.

Notwithstanding any law or any provision of any law to the contrary, the following additional and supplemental powers and authorizations are hereby granted to the state and each political subdivision in connection with the issuance of any bonds:

(a) Such bonds may be issued in fully registered or book-entry form;

(b) All signatures and seals appearing on such bonds as required or permitted by law may be facsimile signatures and seals;

(c) Such bonds may be made subject to such authentication, registration, transfer and payment provisions as shall be set forth in the proceedings authorizing such bonds and the same may be made in such manner as shall be provided in such proceedings;

(d) The State Treasurer, the chancery clerk of the county or the chancery clerk of the county in which the political subdivision is located or has its principal office may act as registrar, paying agent, transfer agent, agent for the delivery and payment of such bonds, authenticating agent or otherwise, and the State Treasurer may collect a reasonable fee from the political subdivision for rendering such services;

(e) Banks and trust companies located either within or without the state may be appointed to act as registrars, paying agents, transfer agents, depositories for safekeeping, agents for the delivery and payment of such bonds, authenticating agents or otherwise, and agreements may be entered into with such banks and trust companies with respect to such duties and payment therefor;

(f) Any agreements to be entered into pursuant to paragraph (e) above may be negotiated without the necessity of competitive bids, and any payments to be made pursuant to such agreements may be made from the proceeds of the bonds to which such agreements apply or from any other moneys legally available therefor; and

(g) All things may be done regarding the form, execution, authentication, transfer and payment of such bonds which may be helpful in assuring compliance with any federal law applicable to such bonds or the interest income thereon and in assuring that such bonds will be readily acceptable in the municipal bond market, provided the same is not inconsistent with the constitution of the state.

HISTORY: Laws, 1983, ch. 494, § 4; Laws, 1987, ch. 431, eff from and after October 1, 1987.

Cross References — Bonds of county water, sewer, garbage disposal, and fire protection districts being issued pursuant to additional powers conferred by this section, see § 19-5-183.

Issuance of county bonds pursuant to additional powers conferred by this section, see § 19-9-7.

Issuance of bonds for purchase of road equipment pursuant to additional powers conferred by this section, see § 19-13-17.

Issuance of municipal bonds pursuant to additional powers conferred by this section, see § 21-33-313.

Issuance of bonds for improvement, development and maintenance of sixteenth section lands pursuant to additional powers conferred by this section, see § 29-3-169.

Issuance of notes to maintain working balance in general fund pursuant to additional powers conferred by this section, see § 31-17-115.

Issuance of bonds for agricultural high schools and agricultural high school-junior colleges pursuant to additional powers conferred by this section, see § 37-27-65.

Issuance of state bonds for construction of school facilities pursuant to additional powers conferred by this section, see § 37-47-49.

Issuance of general school bonds pursuant to additional powers conferred by this section, see § 37-59-25.

Applicability of this section to issuance of bonds for construction and improvement of institutions of higher learning, see §§ 37-101-91 et seq., and 51-33-27.

Issuance of bonds pursuant to additional powers conferred by this section to finance water management district plans and projects, see §§ 51-7-15 and 51-7-27.

Issuance of bonds in connection with Pearl River Valley Water Supply District pursuant to additional powers conferred by this section, see § 51-9-135.

Issuance of bonds for Tombigbee River Valley Water Management District pursuant to additional powers conferred by this section, see § 51-13-125.

Issuance of bonds for Pat Harrison Waterway District pursuant to additional powers conferred by this section, see § 51-15-133.

Issuance of bonds for creation and maintenance of drainage districts pursuant to additional powers conferred by this section, see §§ 51-29-5 and 51-29-63.

Applicability of this section to bonds issued for improvement of drainage, etc., see §§ 51-29-63, 51-31-61, 51-33-37.

Issuance of bonds of urban flood control district pursuant to additional powers conferred by this section, see § 51-35-331.

Issuance of bonds for Bienville Recreational District pursuant to additional powers conferred by this section, see § 55-19-19.

Issuance of municipal bonds for ports of entry pursuant to additional powers conferred by this section, see § 59-3-5.

Issuance of municipal harbor bonds pursuant to additional powers conferred by this section, see § 59-7-13.

Issuance pursuant to additional powers conferred by this section of municipal bonds to provide additional funding for harbors and to acquire and develop land for industrial purposes, see § 59-7-107.

Issuance of bonds of Highway and Street Revenue Bond Authority pursuant to additional powers conferred by this section, see § 65-13-37.

Issuance of road bonds pursuant to additional powers conferred by this section, see § 65-19-25.

§ 31-21-7. Construction of chapter.

(1) This chapter shall be construed to be supplemental and additional to any powers conferred by other laws on the state or any political subdivision and not in derogation of any such powers now existing.

(2) This chapter is remedial in nature and shall be liberally construed.

HISTORY: Laws, 1983, ch. 494, § 5, eff from and after passage (approved April 11, 1983).

Cross References — Provision that, for purposes of limitations on increases in tax levies for school district purposes, the term "new program" includes the Early Childhood Education Program, see § 37-57-107.

Applicability of this section to issuance of bonds for construction and improvement of institutions of higher learning, see §§ 37-101-91 et seq., and 51-33-27.

Applicability of this section to bonds issued for improvement of drainage, etc., see §§ 51-29-63, 51-31-61, 51-33-37.

CHAPTER 23.

MISSISSIPPI PRIVATE ACTIVITY BONDS ALLOCATION ACT

Sec.
31-23-1 through 31-23-19. Repealed.
31-23-51. Citation of chapter.
31-23-53. Definitions.
31-23-55. Powers and duties of board.
31-23-57. Ceiling for issuance of private activity bonds; records; public notice.
31-23-59. Threshold portion of ceiling; applications for notices of allocation; fee; notices of allocation; confirmation of issuance; transfer of funds.
31-23-61. Undesignated portion of ceiling; applications for notices of allocation; fee; notices of allocation; confirmation of issuance.
31-23-63. Student loan portion of ceiling; allocations and transfers; issuance of student loan bonds.
31-23-65. Carry-forward projects; allocation.
31-23-67. Timeliness of statements accompanying applications; record of allocations; notices.
31-23-69. Effect of changes in federal tax laws.

§§ 31-23-1 through 31-23-19. Repealed.

Repealed by Laws, 1987, ch. 522, § 11, eff from and after passage (approved April 21, 1987).

§ 31-23-1. [En Laws, 1985, ch 423, § 1]
§ 31-23-3. [En Laws, 1985, ch 423, § 2]
§ 31-23-5. [En Laws, 1985, ch 423, § 3]
§ 31-23-7. [En Laws, 1985, ch 423, § 4]
§ 31-23-9. [En Laws, 1985, ch 423, § 5]
§ 31-23-11. [En Laws, 1985, ch 423, § 6]
§ 31-23-13. [En Laws, 1985, ch 423, § 7]
§ 31-23-15. [En Laws, 1985, ch 423, § 8]
§ 31-23-17. [En Laws, 1985, ch 423, § 9]
§ 31-23-19. [En Laws, 1985, ch 423, § 10]

Editor's Notes — Former §§ 31-23-1 through 31-23-19 provided a formula for allocating the state's ceiling for the issuance of private activity bonds. For current provisions, see §§ 31-23-51 through 31-23-69.

§ 31-23-51. Citation of chapter.

This act may be cited and referred to as the "Mississippi Private Activity Bonds Allocation Act."

HISTORY: Laws, 1987, ch. 522, § 1, eff from and after passage (approved April 21, 1987).

Editor's Notes — The Preamble of ch. 522, Laws of 1987, effective from and after April 21, 1987, provides as follows:

"WHEREAS, the state's public welfare demands and the state's policy requires the balanced economic development of this state, and the present and prospective health, education, safety, morals, pursuit of happiness, right to gainful employment and the general welfare of the citizens demand as a public purpose the development within Mississippi of commercial, industrial, agricultural and manufacturing enterprises by the development of projects by public entities authorized to issue bonds; and

"WHEREAS, the financing of projects by the issuance of private activity bonds has been and will continue to be an integral part of the state's program for promoting the state's public welfare; and

"WHEREAS, Public Law 99-514, Title XIII, 'Tax-Exempt Bonds,' Sections 1301-1318, amending Title 26, Section 103, of the United States Code, referred to herein as 'federal legislation,' limits the issuance of certain private activity bonds in a state to an amount not exceeding a given state's ceiling, and thereby makes private activity bonds a limited resource; and

"WHEREAS, the formula for allocating a state's ceiling among the issuers in a state provided in the federal legislation is ill-suited to the needs of the State of Mississippi and its political subdivisions; and

"WHEREAS, the Governor, exercising his interim authority granted under the federal legislation, issued an Executive Proclamation on October 20, 1986, which provides a formula different than that under the federal legislation for allocating the state's ceiling among issuers and provides for the administration of the allocation of the state's ceiling; however, such interim authority shall terminate after the earlier of December 31, 1987, or the effective date of a state law providing for a formula for allocating the state's ceiling among issuers; and

"WHEREAS, the means and measures herein authorized to allocate fairly the state's ceiling on the amount of private activity bonds among issuers are, as a matter of public policy, for the public purposes of the several issuers and of the state; NOW, THEREFORE,

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:"

Laws of 1987, ch. 522, § 12, effective from and after April 21, 1987, provides as follows:

"This act shall take effect and be in force from and after its passage. The Governor's Proclamation, issued on October 20, 1986, shall be controlling with respect to the matters set forth therein and any action taken thereunder until this act shall take effect. All lawful actions taken by the board pursuant to said Executive Proclamation prior to the effective date of this act shall be deemed to have been done in conformity with this act and all such actions are hereby ratified and approved."

§ 31-23-53. Definitions.

As used in this chapter, the following terms shall have the following meanings:

(a) "Act" means the Mississippi Private Activity Bonds Allocation Act.

(b) "Allocation shortfall" means the difference between a partial allocation and the full amount of the allocation requested in the approved application by reason of the exhaustion of the amount available in the threshold portion or the undesignated portion.

(c) "Amount," when used with respect to bonds, notices of allocation or parts of the state's ceiling, means a principal amount measured in terms of United States dollars.

(d) "Application" means the application for a notice of allocation required to be filed by issuers with the board pursuant to this act. All applications on file with the board shall terminate at the close of business on December 31 of each year.

(e) "Approved application" means a completed application containing all items necessary for the board to issue a notice of allocation from the threshold portion or from the undesignated portion with respect to a project.

(f) "Board" means the Mississippi Board of Economic Development, or its successor.

(g) "Bond committee" means the bond committee established by the Board of Economic Development pursuant to Section 57-1-3, Mississippi Code of 1972.

(h) "Bond counsel" means an attorney or a firm of attorneys listed in the "Directory of Municipal Bond Dealers of the United States," published by The Bond Buyer and commonly known as the "Red Book," in the section listing municipal bond attorneys of the United States. The edition of this publication which is current from time to time shall determine the listing of bond counsel. If the "Red Book" ceases to be published or ceases to include such a listing of municipal bond attorneys of the United States, the board shall designate another list of municipal bond attorneys for purposes of the system.

(i) "Bonds" means any bonds, notes or other obligations which would constitute private activity bonds.

(j) "Borrower" means, with respect to private activity bonds, any person or legal entity whose trade or business would cause any bonds issued with respect to a project to constitute private activity bonds. If there is more than one (1) such person or legal entity with respect to any issue of bonds, then the term "borrower" shall mean and include each and every such person or legal entity known at the time that the issuer files an application.

(k) "Business day" means a day on which the board is open for business; however, if December 31 is a Saturday or Sunday, "business day" shall include the preceding Friday.

(*l*) "Code" means the Internal Revenue Code of 1986.

(m) "Confirmation of issuance" means the issuer's confirmation to the board, in writing, with a reference to the appropriate notice of allocation, or with respect to the student loan portion, that the bonds authorized by a notice of allocation or student loan bonds have been issued. Such confirmation of issuance may be given in any of the following ways:

(i) By filing with the board the information filing required by Section 149(e) of the code, with proof of filing;

(ii) By Telex, telegram, telecopier or other written means of communication to the board.

(n) "Exempt facility bonds" means any obligations described in Section 142 of the code (excluding the obligations described in paragraphs (1) and (2) of Section 142(a) of the code to the extent that such obligations are not included as private activity bonds under Sections 146(g) and (h)) of the code.

(o) "Exempt facility project" means a project which qualifies to be financed with exempt facility bonds.

(p) "Exempt small issue bonds" means any obligations described in Section 144(a) of the code.

(q) "Expiration date" means the final date on which bonds covered by a notice of allocation may be issued and by which date the board must have received confirmation of issuance.

(r) "Federal legislation" means Public Law 99-514, Title XIII, "Tax-Exempt Bonds," Sections 1301-1318, or any successor thereto.

(s) "Governing body" means the mayor and board of aldermen, city council, board of supervisors, board of directors or other governing body of the issuer.

(t) "Issued" means, with respect to any issue of bonds, that such bonds have actually been delivered and paid for in full. The date of issuance shall be the date on which the bonds have been delivered and paid for in full.

(u) "Issuer" means any political subdivision, governmental unit, authority, corporation or other entity which has the legal authority to issue bonds and, with respect to student loan bonds, shall mean the Mississippi Higher Education Assistance Corporation, or its successor.

(v) "Legal counsel" means an attorney, or firm of attorneys, duly authorized to practice law in the state and admitted to practice before the highest court in the state.

(w) "Mortgage revenue bonds" means any obligations described in Section 143 of the code.

(x) "Mortgage revenue project" means a project which qualifies to be financed with mortgage revenue bonds.

(y) "Notice of allocation" means the notice given by the board allocating a specified amount of the state's ceiling from the threshold portion or from the undesignated portion for a specific issue of bonds. The notice of allocation shall be in writing, shall be given to the issuer at the address specified in the application and shall specify: (i) the amount of the state's ceiling; (ii) the amount of the threshold portion or the undesignated portion, as may be applicable, remaining after such notice of allocation is given; (iii) the amount of bonds which may be issued; and (iv) the expiration date. The notice of allocation shall be in such form as the board may determine.

(z) "Partial allocation" means an amount allocated from the threshold portion or the undesignated portion which is less than the full amount of the allocation requested in the approved application by reason of the exhaustion of the amount available in the threshold portion or the undesignated portion.

(aa) "Private activity bonds" means any bonds which are described in Sections 103 and 141 through 150 of the code.

(bb) "Project" means, with respect to private activity bonds, the facility proposed to be financed, in whole or in part, by an issue of such bonds.

(cc) "Redevelopment bonds" means any obligation described in Section 144(c) of the code.

(dd) "Redevelopment project" means a project which qualifies to be financed with redevelopment bonds.

(ee) "Related persons" means any "related person" as that term is used in Section 144(a)(3) of the code.

(ff) "State" means the State of Mississippi.

(gg) "State's ceiling" means for any calendar year the state's ceiling (as such term is used in Section 146 of the code) applicable to the state. The state's ceiling shall be determined in accordance with the provisions of the federal legislation.

(hh) "Student loan allocation" means the allocation from the state's ceiling for a particular year to the student loan portion pursuant to Section 31-23-63, excluding any portion of the state's ceiling for any prior year allocated to a carry-forward project.

(ii) "Student loan bonds" means any bond issued, all or a major portion of the proceeds of which are to be issued directly or indirectly to finance loans to individuals for educational expenses.

(jj) "Student loan portion" means the amounts prescribed in Section 31-23-63.

(kk) "Student loan project" means a project which qualifies to be financed with student loan bonds.

(*ll*) "System" means the system for allocating and distributing the state's ceiling among issuers, as outlined in this act.

(mm) "Threshold portion" means the part of the state's ceiling to be allocated to exempt small issue bonds and to be administered as the threshold portion in accordance with Section 31-23-59.

(nn) "Undesignated portion" means the part of the state's ceiling to be allocated to bonds other than exempt small issue bonds and to be administered in accordance with Section 31-23-61. The undesignated portion is an amount equal to the state's ceiling less the threshold portion plus any amount transferred to the undesignated portion by the board pursuant to this act.

(oo) "Unused amount" with respect to the threshold portion or the undesignated portion means, as of any time: (i) the amount of the threshold portion or the undesignated portion with respect to which notices of allocation are authorized to be given during a calendar year, but with respect to which no notices of allocation have been given; plus (ii) the amount of the threshold portion or the undesignated portion with respect to which notices of allocation were given, but with respect to which confirmations of issuance were not received by the board on or before the applicable expiration date.

HISTORY: Laws, 1987, ch. 522, § 2, eff from and after passage (approved April 21, 1987).

Editor's Notes — Section 57-1-2 provides that the term "Board of Economic Development" shall mean the "Department of Economic and Community Development."

Section 57-1-54 provides that the term "Department of Economic and Community Development" shall mean the Mississippi Development Authority."

Laws of 1987, ch. 522, § 12, effective from and after April 21, 1987, provides as follows:

"SECTION 12. This act shall take effect and be in force from and after its passage. The Governor's Proclamation, issued on October 20, 1986, shall be controlling with respect to the matters set forth therein and any action taken thereunder until this act shall take effect. All lawful actions taken by the board pursuant to said Executive

Proclamation prior to the effective date of this act shall be deemed to have been done in conformity with this act and all such actions are hereby ratified and approved."

Cross References — State's ceiling, see § 31-23-57.

Threshold portion, see § 31-23-59.

Undesignated portion of ceiling, see § 31-23-61.

Student loan portion of state's ceiling, see § 31-23-63.

Carry-forward projects, see § 31-23-65.

Federal Aspects— Sections 103 and 141 through 150 of Internal Revenue Code of 1986, see 26 USCS §§ 103, 141 through 150.

§ 31-23-55. Powers and duties of board.

The board shall administer, operate and manage the system. Any powers or duties set forth herein to be exercised or performed by the board shall be exercised or performed by the board or one or more individuals designated by the board for such purpose. Without limiting the generality of the board's power and authority to administer, operate and manage the system, the board shall make such determinations and decisions, promulgate such rules, establish such criteria, require the use of such forms, establish such procedures and otherwise administer, operate and manage the system in such respects as may be, in the board's determination, necessary, desirable or incident to its responsibilities as the administrator, operator and manager of the system. The board shall have the power and authority to administer, operate and manage the system in all situations and circumstances, both foreseen and unforeseen, including, without limiting the generality of the foregoing, the power and authority to resolve and deal with any conflicts or inconsistencies in this act or which may arise in administering this act, giving due regard to the purpose of this act to allocate fairly the state's ceiling among issuers and to promote further the economic and educational development and public welfare of the state. The board may promulgate such regulations and establish additional criteria for applicants as may be necessary to enforce the provisions of this act. If the board shall determine that there has been an abuse of the process of applying for a notice of allocation, the board may take, in its discretion, any action it may deem appropriate, including, without limitation, denial or, if the bonds for which the notice of allocation were given have not been issued, withdrawal of the notice of allocation with respect to which the abuse occurred, and/or denial of future applications in which the borrower found to have abused the process of applying for a notice of allocation (or any related person thereto) will be a borrower.

HISTORY: Laws, 1987, ch. 522, § 3, eff from and after passage (approved April 21, 1987).

Editor's Notes — Laws of 1987, ch. 522, § 12, effective from and after April 21, 1987, provides as follows:

"SECTION 12. This act shall take effect and be in force from and after its passage. The Governor's Proclamation, issued on October 20, 1986, shall be controlling with respect to the matters set forth therein and any action taken thereunder until this act shall take effect. All lawful actions taken by the board pursuant to said Executive

Proclamation prior to the effective date of this act shall be deemed to have been done in conformity with this act and all such actions are hereby ratified and approved."

Cross References — Definitions of terms, see § 31-23-53.

Board's duties with respect to state's ceiling for issuance of private activity bonds, see § 31-23-57.

Board's duties with respect to threshold portion of state's ceiling, see § 31-23-59.

Board's duties with respect to undesignated portion of state's ceiling, see § 31-23-61.

Board's duties with respect to student loan bonds, see § 31-23-63.

Board's duties with respect to carry-forward projects, see § 31-23-65.

Board's duties with respect to maintenance of record of notices of allocation issued, amount of state's ceiling available and related data, see § 31-23-67.

Federal Aspects— Excludability from taxable income of interest from certain government securities, see 26 USCS § 103.

§ 31-23-57. Ceiling for issuance of private activity bonds; records; public notice.

The state's ceiling for the issuance of private activity bonds is hereby established, and it shall be determined annually by the board in accordance with the federal legislation. The amount of the state's ceiling available at any time shall be the amount determined by the board, which results from: (a) subtracting from the state's ceiling the amount of bonds issued during the year of calculation pursuant to notices of allocation issued during the year of calculation and with respect to which confirmation of issuance has been received by the board on or before the applicable expiration date; and (b) subtracting from the state's ceiling the amount of notices of allocation issued during the year of calculation and which are outstanding but with respect to which the expiration date has not occurred. The state's ceiling shall be divided annually, for purposes of administering the system into two (2) parts: the threshold portion and the undesignated portion. The board shall keep records of the amount of the state's ceiling available at any given time, including the amount of the threshold portion and the undesignated portion available for notices of allocation at any given time, and shall make available to the public, by periodic news releases and such other means as the board may determine to be appropriate, information with respect to the amount of the state's ceiling, the threshold portion and the undesignated portion. All applications shall apply for, and all notices of allocation shall be given in integrals of One Thousand Dollars ($1,000.00).

HISTORY: Laws, 1987, ch. 522, § 4, eff from and after passage (approved April 21, 1987).

Editor's Notes — Laws of 1987, ch. 522, § 12, effective from and after April 21, 1987, provides as follows:

"SECTION 12. This act shall take effect and be in force from and after its passage. The Governor's Proclamation, issued on October 20, 1986, shall be controlling with respect to the matters set forth therein and any action taken thereunder until this act shall take effect. All lawful actions taken by the board pursuant to said Executive Proclamation prior to the effective date of this act shall be deemed to have been done in conformity with this act and all such actions are hereby ratified and approved."

Cross References — Definitions of terms, see § 31-23-53.

Board's powers and duties in general, see § 31-23-55.
Threshold portion of ceiling, see § 31-23-59.
Undesignated portion of ceiling, see § 31-23-61.
Student loan portion of state's ceiling, see § 31-23-63.

Federal Aspects— Excludability from taxable income of interest from certain government obligations, see 26 USCS § 103.

§ 31-23-59. Threshold portion of ceiling; applications for notices of allocation; fee; notices of allocation; confirmation of issuance; transfer of funds.

The threshold portion of the state's ceiling is hereby established in an amount equal to fifty percent (50%) of the state's ceiling for the year of calculation. Applications for notices of allocation from the threshold portion shall be received and acted on by the board as set forth in this section:

(a) All applications shall be filed on a form promulgated from time to time by the board. The application form shall set forth and include:

(i) The name and address of the issuer and each borrower;

(ii) The dollar amount of the threshold portion requested;

(iii) Whether the applicant requests that a partial allocation be granted in the event the board is unable to grant a notice of allocation for the full amount of the threshold portion requested;

(iv) Whether, if a partial allocation is made, the applicant wishes the allocation shortfall to be treated as a separate application;

(v) Such additional qualifying criteria as the board may establish; and

(vi) An allocation fee of One Thousand Dollars ($1,000.00) to be deposited in the revolving fund established in Section 57-1-66.

(b) In addition, applications filed on or after November 1 of each year shall be accompanied by either of the following (unless previously filed with the board):

(i) A certified copy of the transcript of the proceeding of the governing body authorizing the issuance of the bonds; or

(ii)1. A copy of the inducement resolution or other similar official action taken by the issuer with respect to the project which is the subject of the application, certified by an officer of the issuer; and

2. A written statement of legal counsel or bond counsel, addressed to the board, to the effect that the issuer is authorized under the law of the state to issue bonds for projects of the same type and nature as the project which is the subject of the application. This statement shall cite by constitutional or statutory reference the provision of the constitution or law of the state which authorizes the bonds for the project; and

3. Either

a. In the case of a private placement of bonds, a written commitment from a lender, financial institution, underwriter or investment banker, addressed to the board, the borrower or the issuer, stating that the lender, financial institution, underwriter or investment banker, as the case may be, has agreed to purchase the bonds upon delivery by the issuer and setting forth the rate of interest to be borne by the bonds; or

b. In the case of a public offering of bonds, a letter from a lender, financial institution, underwriter or investment banker addressed to the board, the borrower or the issuer, stating that the lender, financial institution, underwriter or investment banker, as the case may be, has agreed to tender a contract for the purchase of the bonds; and

(c) The board shall stamp or otherwise designate the date and time on which it receives each application. The application shall be considered approved upon review and approval by the bond committee or its designee pursuant to rules, regulations or qualifying criteria promulgated by the board. The application shall be stamped approved when each of the items required under paragraph (a) or paragraphs (a) and (b) above, as applicable, has been received in proper form by the board and approved by the bond committee or its designee. Any application which is not in proper form and which is determined not to be an approved application may be corrected and refiled at any time. Receipt shall be deemed to occur only on a business day.

(d) Within ten (10) days or no later than the last business day of the calendar year after the board receives the application the board shall:

(i) Give its notice of allocation, approving or denying the allocation requested by such application; or

(ii) Give its notice of allocation, approving or denying less than the full amount requested by such application, if the applicant has so requested a partial allocation in the event the board is unable to approve the allocation requested; in such event, if the applicant has requested that the allocation shortfall be treated as a separate application, such allocation shortfall shall be treated as though it were a separate application filed on the date and time on which the original application was filed; or

(iii) Give notice to the issuer that the allocation requested by the application has not been approved or denied because the threshold portion has been exhausted or is insufficient to make the requested allocation, and request written direction from the issuer or the borrower as to whether the board should retain the application for approval in the future or whether the application should be withdrawn or otherwise. If the threshold portion is insufficient to make the requested allocation and the applicant requests the board to hold its approved application until the full amount of the requested allocation can be granted, the board shall not give notices of allocation from the threshold portion for approved applications filed later than such approved application unless the board determines that it is unlikely that the full amount requested in such approved application will be available during the calendar year.

(e) Notices of allocation shall be given with respect to approved applications in the chronological order, by date and time, in which the approved applications were received by the board (except as otherwise provided in this paragraph), shall bear an effective date beginning on the date of issuance of the notice of allocation, and shall bear an expiration date as follows:

(i) Sixty (60) calendar days from the date of issuance, if issued on or after January 1, and on or before October 15;

(ii) December 15, if issued after October 15, and prior to December 9;

(iii) Seven (7) calendar days from the date of issuance, if issued on or after December 9, but in no event shall the expiration date be later than December 31.

(f) If at any time none of the threshold portion remains available for notices of allocation, but additional amounts of the threshold portion become available later in the year because confirmation of issuance was not received by the board on or before the applicable expiration date for any notice of allocation, or because the board has transferred any portion of the state's ceiling to the threshold portion pursuant to the provisions of this chapter, the board shall give a notice of allocation with respect to approved applications earlier received, including any approved applications which failed to receive a notice of allocation pursuant to paragraph (d) above or for which an allocation shortfall was treated as a separate application. Such notices of allocation shall be given, to the extent that the threshold portion becomes available at such later time, with respect to approved applications in chronological order, by date and time, in which they were received by the board (except as otherwise provided in paragraph (d)(iii) of this section).

(g) When bonds covered by a notice of allocation have been issued, confirmation of issuance shall be filed with the board on or before the expiration date.

(h) If confirmation of issuance is not received by the board on or before the applicable expiration date, the amount covered by the particular notice of allocation shall automatically be returned to, and added to, the threshold portion, and shall be available for use in other notices of allocation; provided, if confirmation of issuance is received after the applicable expiration date, the board may, in its discretion and provided amounts are available for such project, treat such bonds as though confirmation of issuance had been received on or before the applicable expiration date.

(i) If confirmation of issuance is not received by the board on or before the applicable expiration date with respect to a notice of allocation, the issuer may file additional applications after the expiration date with respect to all or any part of the issue of bonds covered by such notice of allocation, but such applications shall be treated as filed on the next day after actually filed (and at the time of day such application was filed) for purposes of determining which applications shall receive a notice of allocation where the amount of approved applications on the actual day of filing exceeds the amount of the threshold portion available at that time for notices of allocation.

(j) If, and to the extent that, amounts requested pursuant to approved applications from the undesignated portion exceed the unused amount of the undesignated portion, the board may, at any time and from time to time between July 1 and October 31 of each year, transfer to the undesignated portion all or any part of the unused amount of the threshold portion in excess of the following percentages of the original threshold portion for that year:

Month of Transfer	Percentage of Original Threshold Portion
July	60%
August	50%
September	40%
October	30%

(k) If, and to the extent that, amounts requested pursuant to approved applications from the undesignated portion exceed the unused amount of the undesignated portion, the board may, at any time and from time to time on or after November 1 of each year, transfer all or any part of the unused amount of the threshold portion to the undesignated portion.

(*l*) If, and to the extent that, amounts requested pursuant to approved applications from the threshold portion exceed the unused amount of the threshold portion, the board may, at any time and from time to time between June 1 and October 31 of each year, transfer to the threshold portion all or any part of the unused amount of the undesignated portion in excess of the following percentages of the original undesignated portion for that year:

Month of Transfer	Percentage of Original Threshold Portion
June	30%
July	25%
August	20%
September	15%
October	10%

(m) If, and to the extent that, amounts requested pursuant to approved applications from the threshold portion exceed the unused amount of the threshold portion, the board may, at any time and from time to time on or after November 1 of each year, transfer all or any part of the unused amount of the undesignated portion to the threshold portion.

(n) No fee shall be required at any time for allocations under the Mississippi Business Finance Corporation Beginning Farmer Program, Section 57-10-301 et seq.

HISTORY: Laws, 1987, ch. 522, § 5; Laws, 1991, ch. 584, § 7; Laws, 1993, ch. 548, § 1, eff from and after passage (approved April 19, 1993).

Editor's Notes — Laws of 1987, ch. 522, § 12, effective from and after April 21, 1987, provides as follows:

"SECTION 12. This act shall take effect and be in force from and after its passage. The Governor's Proclamation, issued on October 20, 1986, shall be controlling with respect to the matters set forth therein and any action taken thereunder until this act shall take effect. All lawful actions taken by the board pursuant to said Executive Proclamation prior to the effective date of this act shall be deemed to have been done in conformity with this act and all such actions are hereby ratified and approved."

Cross References — Definitions of terms, see § 31-23-53.

Board's powers and duties in general, see § 31-23-55.

Annual division of state's ceiling into threshold portion and undesignated portion, see

§ 31-23-57.

Undesignated portion of ceiling, see § 31-23-61.

Student loan portion of state's ceiling, see § 31-23-63.

Carry-forward projects, see § 31-23-65.

Federal Aspects— Excludability from taxable income of interest from certain government obligations, see 26 USCS § 103.

§ 31-23-61. Undesignated portion of ceiling; applications for notices of allocation; fee; notices of allocation; confirmation of issuance.

The undesignated portion of the state's ceiling is hereby established in an amount equal to fifty percent (50%) of the state's ceiling. The undesignated portion shall include any amounts transferred to the undesignated portion by the board pursuant to this chapter. All allocations for bonds other than exempt small issue bonds shall be granted from the undesignated portion. Applications for notices of allocation from the undesignated portion shall be received and acted upon as follows:

(a) All applications shall be filed on a form promulgated from time to time by the board. The application form shall set forth: (i) the name and address of the issuer and each borrower; (ii) the dollar amount of the undesignated portion requested; (iii) whether the applicant requests that a partial allocation be granted in the event the board is unable to grant a notice of allocation for the full amount of the undesignated portion requested.

(b) In addition, applications filed on or after November 1 of each year shall be accompanied by the following:

(i) The items which are required to accompany applications for notices of allocation from the threshold portion set forth in Section 31-23-59(b)(i) or Section 31-23-59(b)(ii), except that such items shall specify amounts as to the undesignated portion.

(ii) A written opinion of bond counsel, addressed to the board to the effect that the bonds which are covered by the application will, based upon the information available at that time to such bond counsel, qualify as tax-exempt bonds under applicable federal law when issued.

(iii) An allocation application fee of One Thousand Dollars ($1,000.00) to be deposited in the revolving fund provided for in Section 57-1-66.

(c) The board shall stamp or otherwise designate the date and time on which it receives each application. The application shall be considered approved upon review and approval by the bond committee or its designee pursuant to rules, regulations or qualifying criteria promulgated by the board. The application shall be stamped approved when each of the items required under paragraphs (a) and (b) above, as applicable, has been received in proper form by the board and approved by the bond committee or its designee. Any application which is not in proper form and which is determined not to be an approved application may be corrected and refiled at any time. Receipt shall be deemed to occur only on a business day.

(d) Within ten (10) days or no later than the last business day of the calendar year after the board receives the approved application the board shall:

(i) Give its notice of allocation, approving the allocation requested by such application; or

(ii) Give its notice of partial allocation, approving less than the full amount of the allocation requested by such application, if the applicant has so requested a partial allocation in the event the board is unable to approve the allocation requested. In such event, if the applicant has requested that the allocation shortfall be treated as a separate application, such allocation shortfall shall be treated as though it were a separate application filed on the date and time on which the original application was filed; or

(iii) Give notice to the issuer that the allocation requested by the application has not been approved because the undesignated portion has been exhausted, or is insufficient to make the requested allocation and request written direction from the issuer or the borrower as to whether the board should retain the application for approval in the future or whether the application should be withdrawn or otherwise.

(e) Such notices of allocation shall be given with respect to approved applications in chronological order, by date and time, in which the approved applications were received by the board, shall bear an effective date beginning on the date of issuance of the notice of allocation, and shall bear an expiration date as follows:

(i) Sixty (60) calendar days from the date of issuance, if issued on or after January 1, and on or before October 15.

(ii) December 15, if issued after October 15 and prior to December 9.

(iii) Seven (7) calendar days from the date of issuance, if issued on or after December 9, but in no event shall an expiration date be later than December 31.

(f) If at any time none of the undesignated portion remains available for notices of allocation, but additional amounts of the undesignated portion become available later in the year because confirmation of issuance was not received by the board on or before the applicable expiration date for any notice of allocation or because the board has transferred any portion of the state's ceiling to the undesignated portion pursuant to this chapter, the board shall give a notice of allocation with respect to approved applications earlier received, including any approved applications which failed to receive a notice of allocation pursuant to paragraph (d) above or for which an allocation shortfall was treated as a separate application. Such notices of allocation shall be given to the extent that the undesignated portion becomes available at such later times, with respect to approved applications in chronological order, by date and time, in which they were received by the board.

(g) When bonds covered by a notice of allocation have been issued, confirmation of issuance shall be filed with the board on or before the expiration date.

(h) If confirmation of issuance is not received by the board on or before the applicable expiration date, the amount covered by the particular notice of allocation shall automatically be returned to, and added to, the undesignated portion, and shall be available for use in other notices of allocation; provided, if confirmation of issuance is received after the applicable expiration date, the board may, in its discretion and provided amounts are available for such project, treat such bonds as though confirmation of issuance had been received on or before the applicable expiration date.

(i) If confirmation of issuance is not received by the board on or before the applicable expiration date with respect to a notice of allocation from the undesignated portion, the issuer may file additional applications after the expiration date with respect to all or any part of the issue of bonds covered by such notice of allocation, but such applications shall be treated as filed on the next day after actually filed (and at the time of day such application was filed) for purposes of determining which applications shall receive a notice of allocation where the amount of approved applications on the actual day of filing exceeds the amount of the undesignated portion available at that time for notices of allocation.

HISTORY: Laws, 1987, ch. 522, § 6; Laws, 1990, ch. 570, § 3; Laws, 1991, ch. 584, § 8, eff from and after July 1, 1991.

Editor's Notes — Laws of 1987, ch. 522, § 12, effective from and after April 21, 1987, provides as follows:

"SECTION 12. This act shall take effect and be in force from and after its passage. The Governor's Proclamation, issued on October 20, 1986, shall be controlling with respect to the matters set forth therein and any action taken thereunder until this act shall take effect. All lawful actions taken by the board pursuant to said Executive Proclamation prior to the effective date of this act shall be deemed to have been done in conformity with this act and all such actions are hereby ratified and approved."

Laws of 1990, ch. 570, § 20, effective July 1, 1990, provides as follows:

"SECTION 20. (1) Any attorney's fees paid as the result of the issuance of bonds under this act shall be in compliance with the limits on attorney's fees for bond issues as adopted by the State Bond Commission. Attorney's fees paid as the result of the issuance of bonds under this act shall be subject to negotiation but in no event shall exceed the limits established by the State Bond Commission. A detailed accounting of all expenses incurred by all persons, firms, corporations, associations or other organizations involved in such bond issues shall be submitted to the State Bond Commission within ninety (90) days after the issuance of such bonds and shall be a matter of public record.

"(2) No member of the Legislature, elected official or appointed official, or any partner or associate of any member of the Legislature, elected official or appointed official, shall derive any income from the issuance of any bonds or the disposition of any property under this act contrary to the provisions of Section 109, Mississippi Constitution of 1890, or Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

"(3) In connection with the issuance and sale of bonds authorized under this act, the State Bond Commission shall select a bond attorney or attorneys who are listed in the 'Directory of Municipal Bond Dealers of the United States' and who are members in good standing of the Mississippi State Bar Association and licensed to practice law in the State of Mississippi; however, upon a finding by the commission spread on its official minutes that the public interest will best be served thereby, the commission may select any bond attorney or attorneys listed in the 'Directory of Municipal Bond Dealers of the United States'."

Cross References — Article 3, Chapter 4, Title 25, see § 25-4-101 et seq.

Definitions of terms, see § 31-23-53.

Board's powers and duties in general, see § 31-23-55.

Annual division of state's ceiling into threshold portion and undesignated portion, see § 31-23-57.

Threshold portion of ceiling, see § 31-23-59.

Carry-forward projects, see § 31-23-65.

Student loan portion of state's ceiling, see § 37-23-63.

Federal Aspects— Excludability from taxable income of interest from certain government obligations, see 26 USCS § 103.

§ 31-23-63. Student loan portion of ceiling; allocations and transfers; issuance of student loan bonds.

(1) The student loan portion of the state's ceiling is hereby established, and an allocation thereto is hereby made from the undesignated portion in the amount of Thirteen Million Dollars ($13,000,000.00) (excluding carry-forward elections) in calendar year 1987. For the 1989 calendar year a total of Thirty-five Million Dollars ($35,000,000.00), less the aggregate of all carry-forward allocations to student loan projects from the state's ceiling for 1987 and 1988 (other than any carry-forward of all or part of the Thirteen Million Dollars ($13,000,000.00) allocation for 1987 described above), is hereby allocated from the undesignated portion to the student loan portion. Additional amounts may be allocated to the student loan portion pursuant to the provisions of Section 31-23-61, and such notices of allocation shall remain valid from the date of issuance until the last business day of that year, notwithstanding the provisions of Section 31-23-61(e). The student loan portion shall also include any other allocations to student loan projects pursuant to this act.

(2) Upon written request of the board, the issuer of student loan bonds shall promptly provide a written certification to the board as to the amount available in the student loan allocation which the issuer reasonably expects to utilize. Any amount of the student loan allocation which the issuer does not certify that it reasonably expects to utilize, and which another issuer may utilize in accordance with the federal legislation, may be transferred from time to time by the board, in whole or in part, to the threshold portion or the undesignated portion. If such a transfer is made, an amount equal to that transferred shall be allocated from the undesignated portion of the state's ceiling to the student loan portion in the succeeding calendar year in addition to the amounts allocated to the student loan portion for that year as set forth above.

(3) Student loan bonds may be issued at any time to the full extent of the amount available in the student loan portion, but not in excess of such amount. Confirmation of issuance of student loan bonds shall be furnished to the board by the issuer within thirty (30) business days after the issuance, but in any event on or before the last business day of the year in which such bonds were issued.

(4) If there is any unused amount remaining in the student loan allocation on the last business day of a year, and if the issuer of student loan bonds has filed with the board one or more elections to treat one or more student loan projects as carry-forward projects, and has in the election specified the carry-forward amount or amounts, and identified the purpose for which the carry-forward is elected, the board shall allocate such unused amounts to such student loan project or projects, and such student loan project or projects shall be treated as a carry-forward project or projects in the specified carry-forward amount under the federal legislation.

(5) For purposes of determining unused amounts and for purposes of determining the amount of the state's ceiling available pursuant to Section 31-23-57, except as provided in subsection (2) above, during 1987 and 1989 amounts automatically allocated to the student loan portion as described above shall be treated as though a notice of allocation had been issued on January 1 of the applicable year, expiring on the last business day of such year.

HISTORY: Laws, 1987, ch. 522, § 7, eff from and after passage (approved April 21, 1987).

Editor's Notes — Laws of 1987, ch. 522, § 12, effective from and after April 21, 1987, provides as follows:

"SECTION 12. This act shall take effect and be in force from and after its passage. The Governor's Proclamation, issued on October 20, 1986, shall be controlling with respect to the matters set forth therein and any action taken thereunder until this act shall take effect. All lawful actions taken by the board pursuant to said Executive Proclamation prior to the effective date of this act shall be deemed to have been done in conformity with this act and all such actions are hereby ratified and approved."

Cross References — Definitions of terms, see § 31-23-53.
Board's powers and duties in general, see § 31-23-55.
State's ceiling, see § 31-23-57.
Threshold portion, see § 31-23-59.
Carry-forward projects, see § 31-23-65.
Student loan programs, see §§ 37-106-1 et seq.

Federal Aspects— Excludability from taxable income of interest from certain government securities, see 26 USCS § 103.

§ 31-23-65. Carry-forward projects; allocation.

(1) The board may promulgate such rules and procedures as may be necessary in order to implement the provisions of the federal legislation and any regulations promulgated pursuant to the federal legislation for carry-forward projects. Bonds for carry-forward projects may be issued during the three (3) calendar years following the calendar year in which the carry-forward arose.

(2) If there is any unused amount (other than unused amounts being carried forward pursuant to Section 31-23-63(4)) remaining in either the undesignated portion or the threshold portion at the close of business on the last business day of a year, or at such later time as may be prescribed by regulations promulgated pursuant to the federal legislation, and if issuers have previously filed with the board elections to treat specific redevelopment

projects, exempt facility projects or student loan projects as carry-forward projects, and have in the election specified the carry-forward amounts and identified the purpose for which the carry-forward is elected, the board shall:

(a) Allocate such unused amounts to such projects with respect to which issuers have filed such elections, in order of priority as follows:

(i) First, to those redevelopment projects, exempt facility projects and student loan projects which are reasonably expected to be financed with bonds to be issued during the ensuing calendar year (proportionately in relation to the carry-forward amounts specified in the elections if the unused amounts are less than the aggregate of the carry-forward amounts specified in all such elections); and

(ii) Second, to redevelopment projects, exempt facility projects and student loan projects not described in item (i) above (proportionately in relation to the carry-forward amounts specified in the elections if the remaining unused amounts are less than the aggregate of the carry-forward amounts specified in all such elections);

(iii) Third, to priority projects not described in item (i) above (proportionately in relation to the carry-forward amounts specified in the elections if the remaining unused amounts are less than the aggregate of the carry-forward amounts specified in all such elections); and

(b) Allocate any remainder to student loan projects, to the extent that evidence of elections with respect thereto shall be on file with the board. After unused amounts are allocated to any mortgage revenue projects, redevelopment projects, exempt facility project or student loan project, such projects shall be treated as carry-forward projects under the federal legislation.

(3) Bonds issued to finance all or part of any project designated as a carry-forward project shall be included within the carry-forward amount for such carry-forward project if:

(a) A statement that such bonds have been issued with a reference to the carry-forward project is delivered to the board within thirty (30) days of the issuance of such bonds; and

(b) Either

(i) Such bonds are issued to finance a student loan project as part of the carry-forward amount allocated pursuant to subsection (2)(b) above and bonds in aggregate principal amount equal to or greater than all amounts allocated to student loan projects pursuant to subsection (2)(a) above shall have been issued; or

(ii) Such bonds are issued in aggregate principal amount sufficient to, together with all other obligations previously issued and included within such carry-forward amount for such carry-forward project, aggregate at least seventy-five percent (75%) of the carry-forward amount with respect to such carry-forward project; or

(iii) The board shall have certified such obligations as included within such carry-forward amount; or

(iv) Such bonds are issued to finance student loan projects, in whole or in part, as all or part of a carry-forward amount allocated pursuant to Section 31-23-63(4); or

(v) Such bonds are issued to finance student loan projects, in whole or in part, as all or part of a carry-forward amount allocated pursuant to subsection (2)(a) above.

(4) In the event that any issuer anticipates issuing obligations to be included within the carry-forward amount for a particular project, unless such obligations will meet either the test set forth in subsection (3)(b)(i) above or the test set forth in subsection (3)(b)(ii) above, the issuer shall notify the board of its intent to issue such bonds, and advise the board of reasons for the issuance of such bonds in principal amount less than the carry-forward amount. The board shall be conclusively deemed to have certified that such obligations will be included in the carry-forward amount for such carry-forward project unless, within five (5) business days of receipt of such notice, it determines:

(a) That the issuer and, unless such bonds are student loan bonds or mortgage revenue bonds, the borrower do not reasonably expect that bonds will be issued to finance such carry-forward project in an aggregate principal amount equal to at least seventy-five percent (75%) of the carry-forward amount specified for such carry-forward project; and

(b) That the issuer and, unless the bonds are student loan bonds or redevelopment bonds, the borrower did not reasonably expect, on the date on which unused amounts were allocated to such carry-forward project, that bonds would be issued to finance such carry-forward project in an aggregate principal amount equal to at least seventy-five percent (75%) of the carry-forward amount specified for such carry-forward project.

(5) In the event that unused amounts are allocated to a carry-forward project pursuant to subsection (2)(a) above, and bonds are not issued to finance all or any part of a carry-forward project within the period specified therefor, if the board determines that the issuer and, unless the bonds are student loan bonds or redevelopment bonds, the borrower did not reasonably expect, on the date on which unused amounts were so allocated to such carry-forward project, to issue bonds to finance all or part of such carry-forward project, the board may, in its discretion and for such period of time as it shall determine to be appropriate, refuse:

(a) To accept applications for projects with respect to which the borrower designated in the election with respect to such carry-forward project (or any related person to such borrower) will be a borrower; and

(b) To allocate carry-forward amounts to carry-forward projects with respect to which such borrower (or any related person to such borrower) will be a borrower; and

(c) In the case of student loan bonds or redevelopment bonds, to allocate carry-forward amounts to student loan projects or redevelopment projects pursuant to subsection (2)(a) above.

HISTORY: Laws, 1987, ch. 522, § 8, eff from and after passage (approved April 21, 1987).

Editor's Notes — Laws of 1987, ch. 522, § 12, effective from and after April 21, 1987, provides as follows:

"SECTION 12. This act shall take effect and be in force from and after its passage. The Governor's Proclamation, issued on October 20, 1986, shall be controlling with respect to the matters set forth therein and any action taken thereunder until this act shall take effect. All lawful actions taken by the board pursuant to said Executive Proclamation prior to the effective date of this act shall be deemed to have been done in conformity with this act and all such actions are hereby ratified and approved."

Cross References — Definitions of terms, see § 31-23-53.

Board's powers and duties in general, see § 31-23-55.

Threshold portion of ceiling, see § 31-23-59.

Undesignated portion of ceiling, see § 31-23-61.

Student loan portion of ceiling, see § 31-23-63.

Federal Aspects— Excludability from taxable income of interest from certain government obligations, see 26 USCS § 103.

§ 31-23-67. Timeliness of statements accompanying applications; record of allocations; notices.

The following provisions shall apply to the system:

(a) Any written statements or opinions of bond counsel and legal counsel and the commitment from a lender, financial institution, underwriter or investment banker accompanying any applications shall be dated no more than thirty (30) days prior to the date on which the application is filed. Such opinions, commitments and any other items accompanying an application shall be in substantially the form or forms promulgated or required by the board from time to time.

(b) The board shall maintain a record of the notices of allocation issued and the amount of the state's ceiling available from time to time and related data in a register thereof. Notices of allocation shall be deemed to be issued when such allocation is registered in the register. Other notices and written communications from the board shall be deemed to have been given when duly deposited in the United States mail, first class, with all postage prepaid. Notices of allocation may, at the request of the applicant, be picked up by hand at the offices of the board or be delivered by courier or other delivery service at the expense of the applicant. Notices and other written communications to, and filings with, the board shall be deemed given or made when actually received by the board, whether by actual delivery to the offices of the board or by United States mail, first class, with all postage prepaid.

(c) Notwithstanding anything in this act to the contrary, the board may give a notice of its intention during any year to issue a notice of allocation during the next year. Such notice of intention shall be for informational purposes only, and shall not be binding upon the board.

HISTORY: Laws, 1987, ch. 522, § 9, eff from and after passage (approved April 21, 1987).

Editor's Notes — Laws of 1987, ch. 522, § 12, effective from and after April 21, 1987, provides as follows:

"SECTION 12. This act shall take effect and be in force from and after its passage.

The Governor's Proclamation, issued on October 20, 1986, shall be controlling with respect to the matters set forth therein and any action taken thereunder until this act shall take effect. All lawful actions taken by the board pursuant to said Executive Proclamation prior to the effective date of this act shall be deemed to have been done in conformity with this act and all such actions are hereby ratified and approved."

Cross References — Definitions of terms, see § 31-23-53.

Board's powers and duties in general, see § 31-23-55.

Federal Aspects— Excludability from taxable income of interest from certain government obligations, see 26 USCS § 103.

§ 31-23-69. Effect of changes in federal tax laws.

In the event that interest on exempt small issue bonds and/or mortgage revenue bonds is no longer excludable from federal income tax under federal law the provisions of this act with respect to exempt small issue bonds and/or mortgage revenue bonds, as applicable, thereafter shall be deemed to be of no further force and effect.

HISTORY: Laws, 1987, ch. 522, § 10, eff from and after passage (approved April 21, 1987).

Editor's Notes — Laws of 1987, ch. 522, § 12, effective from and after April 21, 1987, provides as follows:

"SECTION 12. This act shall take effect and be in force from and after its passage. The Governor's Proclamation, issued on October 20, 1986, shall be controlling with respect to the matters set forth therein and any action taken thereunder until this act shall take effect. All lawful actions taken by the board pursuant to said Executive Proclamation prior to the effective date of this act shall be deemed to have been done in conformity with this act and all such actions are hereby ratified and approved."

Cross References — Definitions of terms, see § 31-23-53.

Federal Aspects— Excludability from taxable income of interest from certain government obligations, see 26 USCS § 103.

CHAPTER 25.

MISSISSIPPI DEVELOPMENT BANK ACT

Article 1. General Provisions. 31-25-1
Article 3. Bonds. 31-25-101

ARTICLE 1.

GENERAL PROVISIONS.

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§ 31-25-1. Short title.

This act may be referred to and cited as the "Mississippi Development Bank Act."

HISTORY: Laws, 1986, ch. 455, § 1, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

Authorization for Mississippi Business Finance Corporation to take necessary action to operate the Mississippi Development Bank, see § 57-10-17.

§ 31-25-3. Legislative intent; construction.

It is hereby determined and declared to be the policy of the state that, for the benefit of the people of the State of Mississippi, it is essential to foster and promote by all reasonable means the provision of adequate access to capital markets and facilities for borrowing money to finance infrastructure improvements and other public purposes from the proceeds of bonds and to the extent possible to reduce costs of indebtedness to taxpayers and residents of the state through the encouragement of investor interest in the purchase of such bonds as sound and preferred securities for investment. It is further found and declared that the state should exercise its powers to further and implement these policies by authorizing an independent public body to be created and to have full power to borrow money and to issue its bonds and notes to make funds available at reduced rates and on more favorable terms for borrowing as provided in this act. This act shall be liberally construed to accomplish the intentions, purposes and objects expressed herein.

HISTORY: Laws, 1986, ch. 455, § 2, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-5. Definitions.

As used in this act, the following words and terms have the following meanings, unless a different meaning clearly appears from the context:

(a) "Act" means this Mississippi Development Bank Act.

(b) "Bank" means the Mississippi Development Bank created by this act.

(c) "Board" means the Board of Directors of the Mississippi Business Finance Corporation.

(d) "Bondholder" or "holder" or any similar term when used with reference to a bond of the bank means any person who shall be the bearer of any outstanding bond of the bank registered to bearer or not registered, or the registered owner of any outstanding bond of the bank which shall at the time be registered other than to bearer.

(e) "Bonds" means bonds, notes or other evidences of indebtedness of the bank issued pursuant to this act.

(f) "County" shall mean a county of this state.

(g) "Fully marketable form" means a duly and validly issued security accompanied by an approving legal opinion of a bond counsel of recognized standing in the field of bond law whose opinions are generally accepted by purchasers of municipal bonds, provided that the security so executed need not be printed or lithographed nor be in more than one (1) denomination.

(h) "Local governmental unit" means (i) any county, municipality, utility district, regional solid waste authority, county cooperative service district or political subdivision of the State of Mississippi, (ii) the State of Mississippi or any agency thereof, (iii) the institutions of higher learning of the State of Mississippi, (iv) any education building corporation established for institutions of higher learning, or (v) any other governmental unit created under state law.

(i) "Municipality" means any municipality of the state, whether operating under the code charter, the commission form of government, a special charter or any other form of government.

(j) "Security" means a bond, note or other evidence of indebtedness issued by a local governmental unit pursuant to the provisions of this act.

(k) "Revenues" means all fees, charges, monies, profits, payments of principal of or interest on securities and other investments, gifts, grants, contributions, appropriations and all other income derived by the bank under this act.

(*l*) "State" means the State of Mississippi.

HISTORY: Laws, 1986, ch. 455, § 3; Laws, 1991, ch. 578, § 1; Laws, 1992, ch. 481 § 1; Laws, 2000, ch. 537, § 1, eff from and after passage (approved May 5, 2000).

Cross References — Authorization for bank to issue certain amount in revenue bonds for a regional solid waste authority and a county cooperative service district, see § 31-25-21.

Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81.

Mississippi Business Finance Corporation, establishment, board membership, see §§ 57-10-1 et seq.

§ 31-25-7. Mississippi Development Bank created.

There is hereby created an independent public body corporate and politic to be known as the Mississippi Development Bank. Such bank is created solely to accomplish the purposes of the state under this chapter and the exercise by the bank of the powers conferred by this act shall be deemed and held to be the performance of an essential public function.

The bank and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as the bank shall have bonds or other obligations outstanding, unless provision has been made for the full and complete payment thereof. Upon termination of the existence of the bank, all its rights and properties shall pass to and be vested in the state. No net earnings of the bank may inure to the benefit of any person, entity or bank other than the state.

HISTORY: Laws, 1986, ch. 455, § 4; Laws, 1992, ch. 481 § 2, eff from and after passage (approved May 6, 1992).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-9. Bank's powers vested in board.

The powers conferred upon the bank hereby are to be vested in the board.

HISTORY: Laws, 1986, ch. 455, § 5; Laws, 1992, ch. 481 § 3, eff from and after passage (approved May 6, 1992).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

Mississippi Business Finance Corporation, establishment, board membership, see §§ 57-10-1 et seq.

§ 31-25-11. Quorum for conducting business; per diem compensation; expenses.

A majority of the voting members of the board then in office shall constitute a quorum for the purpose of conducting business and exercising its powers. Action may be taken and motions and resolutions adopted by the board upon the affirmative vote of a majority of its members present at any meeting at which a quorum was present. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the bank. Notice of meetings shall be given in the manner provided in the bylaws of the bank. Resolutions need not be published or posted. Members of the board shall receive per diem compensation for services in an amount as provided under Section 25-3-69 and shall be entitled to expenses necessarily incurred in the discharge of their duties in accordance with Section 25-3-41. Any payments for compensation and expenses shall be paid from funds of the bank.

HISTORY: Laws, 1986, ch. 455, § 6, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81.

§ 31-25-13. Repealed.

Repealed by Laws, 1992, ch. 481, § 9, eff from and after passage (approved May 6, 1992).

§ 31-25-13. [Laws, 1986, ch. 455, § 7, eff from and after passage (approved April 10, 1986)]

Editor's Notes — Former Section 31-25-13 provided for the organization of the Board of the Mississippi Development Bank. Transfer of powers of Development Bank to Board of Directors of Mississippi Business Finance Corporation, see § 31-25-9.

§ 31-25-15. Disclosure of contractual interest.

Any member, officer or employee of the bank who is interested either directly or indirectly, or who is an officer or employee of, or has an ownership interest in any firm or agency interested, directly or indirectly, in any contract with the bank, shall disclose this interest to the board. This interest shall be set forth in the minutes of the board, and the member, officer or employee having the interest shall not participate on behalf of the bank in the authorization of any such contract.

HISTORY: Laws, 1986, ch. 455, § 8, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81.

§ 31-25-17. Acceptance of membership on bank; nonforfeiture of office or employment.

Notwithstanding the provisions of any other law, no officer or employee of this state shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on the bank or his services as such member.

HISTORY: Laws, 1986, ch. 455, § 9, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-19. Powers and duties of Bank.

(1) In addition to the other powers granted to the bank under this act, the bank shall have the power:

(a) To sue and be sued in its own name;

(b) To have an official seal and to alter the same at pleasure;

(c) To maintain an office at such place or places within this state as it may designate, by lease without the approval of any other state agency or department;

(d) To adopt and, from time to time, to amend and repeal bylaws and rules and regulations, not inconsistent with this act, to carry into effect the powers and purposes of the bank and governing the conduct of its affairs and business and the use of its services and facilities;

(e) To make, enter into and enforce all contracts or agreements necessary, convenient or desirable for the purposes of the bank or pertaining to any loan to a local governmental unit made by the purchase of municipal securities or to the performance of its duties and execution or carrying out of any of its other powers under this act;

(f) To acquire, hold, use and dispose of its income, revenues, funds and monies;

(g) To the extent that it will facilitate the conduct of its operations and thereby further the purposes of this act, to acquire real or other personal property, or any interest therein, on either a temporary or long-term basis in the name of the bank by gift, purchase, transfer, foreclosure, lease or otherwise, including rights or easements, hold, sell, assign, lease, encumber mortgage or otherwise dispose of any real or other personal property, or any interest therein or mortgage interest owned by it or under its control, custody or in its possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it and to do any of the foregoing by public or private sale; and, to the same extent, to lease or rent any lands, buildings, structures, facilities or equipment from private parties;

(h) To enter into agreements or other transactions with and accept the cooperation of the United States or any agency thereof or of the state or any agency or governmental subdivision thereof (including any local governmental unit whether or not such local governmental unit is selling or has sold its bonds to the bank) in furtherance of the purposes of this act and the corporate purposes of the bank, and to do any and all things necessary in order to avail itself of such cooperation;

(i) To receive and accept grants, aid or contributions, including loan guarantees, from any source of money, materials, property, labor, supplies, services, program or other things of value, to be held, used and applied to carry out the purposes of this act subject to such conditions upon which such grants and contributions, including loan guarantees, may be made, including, but not limited to, gifts or grants, including loan guarantees, from any department or agency of the United States or of this state or of any governmental subdivision of this state (including any local governmental unit whether or not such local governmental unit is selling or has sold its bonds to the bank) for any purpose consistent with this act, and to do any and all things necessary, useful, desirable or convenient in connection with the procurement acceptance or disposition of such gifts or grants, including loan guarantees;

(j) To procure insurance against any loss in connection with its property and other assets in such amounts and from insurers as it deems desirable, and to obtain from any department or agency of the United States of America or nongovernmental insurer any insurance or guaranty, to the extent now or hereafter available, as to, or of or for the payment or repayment of interest, principal or redemption price, if any, or all or any part thereof, on any bonds issued by the bank, or on any municipal securities of local governmental units purchased or held by the bank pursuant to this act; and notwithstanding any other provisions of this act to the contrary, to enter into any agreement or contract whatsoever with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the bank to perform and fulfill the terms of any agreement made with the holders of the bonds of the bank;

(k) To employ administrative and clerical staff, managing agents, architects, engineers, attorneys, accountants, and financial advisors and experts and such other advisors, consultants, agents and employees as may be necessary in its judgment and to fix their compensation, and to perform its powers or functions through its officers, agents and employees or by contracts with any firm, person or corporation;

(*l*) To the extent permitted under its contract with the holders of bonds of the bank, to consent to any modification of the rate of interest, time and payment of any installment of principal or interest, security or any other term of such bond, contract or agreement of any kind to which the bank is a party;

(m) To purchase, hold or dispose of any of its bonds;

(n) Notwithstanding any law to the contrary, to invest any funds or monies of the bank or proceeds of any securities or certificates of participation in such manner as shall be deemed by the bank to be prudent except as otherwise permitted or provided by this act;

(o) To conduct examinations and hearings and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material for its information and necessary to carry out this act;

(p) To loan money to local governmental units by the purchase of municipal securities, subject to the provisions of this act;

(q) To borrow money for any of its corporate purposes and to issue bonds therefor, subject to the provisions of this act;

(r) To exercise any and all of the powers granted to the bank by any other section of this act and to do any act necessary or convenient to the exercise of the powers herein granted or reasonably implied therefrom;

(s) To loan money to any local governmental unit under any loan guaranty program of any department or agency of the United States, including the United States Department of Agriculture Rural Utility Services Water and Waste Disposal Guaranteed Loan Program and Community Programs Guaranteed Loan Program or any such successor guaranty programs; and

(t) Notwithstanding any law to the contrary, to contract with any local governmental unit for the exercise by the bank of any and all of the bank's powers as set out in this act, with respect to proceeds of such local governmental unit's securities or certificates of participation issued by such local governmental unit pursuant to any state law authorizing the issuance of local governmental unit debt.

(2) Paragraphs (s) and (t) of subsection (1) of this section shall be deemed to provide all necessary authority for the doing of the things authorized

thereby and shall be liberally construed to accomplish the purposes and the authorizations therein stated.

HISTORY: Laws, 1986, ch. 455, § 10; Laws, 2001, ch. 337, § 26; Laws, 2003, ch. 328, § 1, eff from and after passage (approved Mar. 7, 2003).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-20. Power of bank to loan money to local governmental unit.

In addition to the other powers granted to the bank under this section, the bank shall have the powers:

(a) To make, enter into and enforce all contracts or agreements necessary, convenient or pertaining to any loan to a local governmental unit under this section;

(b) To loan money to local governmental units for any of the purposes set forth in this section;

(c) To charge for its costs and services in reviewing or considering any proposed loan to a local governmental unit and such costs may be established in such manner as the bank shall determine;

(d) To fix and prescribe any form of application or procedure to be required of a local governmental unit for the purpose of any loan to be made to such governmental unit and to fix the terms and conditions of any such loan;

(e) To issue revenue bonds to fund loans to local governmental units for the acquisition, construction and installation of energy related improvements, and other related or similar infrastructure improvements consistent with the intentions, purposes and objects of this section. Before any bonds may be issued for this purpose, the requirements of Section 31-25-28(6) must be satisfied; and

(f) To issue revenue bonds to fund or assist in funding retirement systems established pursuant to Sections 21-29-201 through 21-29-261. Before any revenue bonds may be issued for this purpose, the municipality whose retirement system is being funded by such bonds shall have an actuary perform a study through the Public Employees' Retirement System to determine the effect of such revenue bonds on such retirement system.

(g) To issue bonds in the amount of Five Million Dollars ($5,000,000.00) to provide additional funding for the grant program authorized under Section 18 of Chapter 530, Laws of 1995, which provided funds to counties and municipalities for the construction, renovation and expansion of livestock facilities.

HISTORY: Laws, 1996, ch. 470, § 1, eff from and after passage (approved April 3, 1996).

§ 31-25-21. Power of bank to loan money to local governmental unit.

The bank is hereby granted, has and may exercise the power to borrow money and issue its bonds in such principal amounts as it shall deem necessary to provide funds to accomplish a public purpose or purposes of the state provided for under this chapter, including:

(a) The making of loans to local governmental units by the purchase of municipal securities thereof;

(b) The payment, funding, refunding of the principal of, or interest or redemption premiums on, any bonds issued by it whether the bonds have or have not become due or subject to redemption in accordance with their terms;

(c) The establishment or increase of such debt service reserves and capitalized interest accounts to pay bonds or interest thereon as the bank shall consider necessary or advisable in the marketing of such bonds;

(d) The payment of consultant and legal fees and such other costs of issuance and expenses necessary or incidental to such bond issue;

(e) The deposit of funds into reserve funds established by the bank;

(f) The establishment or increase of reserves to pay all other costs and expenses of the bank incident to and necessary or convenient to carrying out its corporate purposes and powers;

(g) The deposit of funds into the Water Pollution Control Revolving Fund and the Water Pollution Control Emergency Loan Fund created pursuant to Sections 49-17-81 through 49-17-89;

(h) The issuance of up to Fifty Million Dollars ($50,000,000.00) in revenue bonds for regional solid waste authorities and county cooperative service districts;

(i) The advance purchase of energy for any municipality that operates a gas producing, generating, transmission or distribution system, or an electric generating, transmission or distribution system under Sections 21-27-11 through 21-27-71;

(j) The issuance of revenue bonds to fund or assist in funding retirement systems established pursuant to Sections 21-29-1 through 21-29-55 and Sections 21-29-101 through 21-29-151. Before any revenue bonds may be issued for this purpose the municipality whose retirement system is being funded by such bonds shall have an actuary perform a study through the Public Employees' Retirement System to determine the amount of revenue bonds that should be issued to make such retirement system actuarially sound;

(k) To issue general obligation bonds of the State of Mississippi for the purposes provided in Section 31-25-20(g), as such section existed on April 3, 1996. The authority to issue such general obligation bonds of the State of Mississippi shall be repealed from and after the date that the bonds have been issued in their entirety;

(*l*) The issuance of bonds to fund loans made by the bank to any local governmental unit under any loan guaranty program of any department or agency of the United States, including the United States Department of Agriculture Rural Utility Services Water and Waste Disposal Guaranteed Loan Program and Community Programs Guaranteed Loan Program or any such successor guaranty programs.

(m) Any other lawful, corporate purpose.

HISTORY: Laws, 1986, ch. 455, § 11; Laws, 1989, ch. 522, § 2; Laws, 1992, ch. 481 § 4; Laws, 1994, ch. 547, § 1; Laws, 1994, ch. 548, § 1; Laws, 1996, ch. 455, § 5; Laws, 1997, ch. 302, § 1; Laws, 2003, ch. 328, § 2, eff from and after passage (approved Mar. 7, 2003).

Cross References — Municipally owned utilities, see §§ 21-27-11 et seq.

Issuance of bonds by the Development Bank, see § 31-25-101 et seq.

Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Reading Section 21-29-219 as a whole, this statute authorizes two distinct tax levies: the first in subsection (1) for the direct support of the retirement fund and another in subsection (2) to service the debt on bonds issued under Sections 31-25-21 and 31-25-20. Stone, June 14, 1996, A.G. Op. #96-0358.

§ 31-25-23. Loans to local governmental units; purchase or sale of municipal securities.

The bank is hereby granted, has and may exercise, the following powers:

(a) To make loans to local governmental units by the purchase and holding of municipal securities in such form (including fully remarketable form), at such prices, in such manner, on such terms and conditions and with such security features as the bank shall deem advisable subject to the provisions of Section 31-25-27;

(b) Subject to the terms of contracts with the holders of bonds of the bank, to sell municipal securities acquired or held by it at such prices without relation to costs and in such manner as the bank shall deem desirable;

(c) To charge for its costs and services in reviewing or considering any proposed loan to a local governmental unit by the purchase of municipal securities of such local governmental unit, and to charge therefor, whether or not such municipal securities are purchased, and such costs may be established in such manner as the bank shall determine, including but not limited to an allocation to each local governmental unit using the services of the bank of an equitable portion of the total administrative expenses of the bank, which expenses shall include the fees and expenses of trustees and paying agents for bonds of the bank, as it shall deem appropriate;

(d) In connection with any loan to a local governmental unit, to consider the need, desirability or eligibility of the loan, the ability of the local governmental unit to secure borrowed money from other sources and the costs thereof, the particular local improvements or purposes to be financed by the municipal securities to be purchased by the bank, the ability of the municipality to supply other essential public improvements and services and to pay punctually the principal and interest on its debts, the reasonableness of the amounts to be expended for each of the purposes or improvements to be financed pursuant to such bonds, and such other factors as the bank may deem necessary;

(e) To establish any terms and provisions with respect to any purchase of municipal securities by the bank, including date and maturities of the bonds, provisions as to redemption or payment prior to maturity, and any other matters which are necessary, desirable or advisable in the judgment of the bank, subject to the provisions of Section 31-25-27;

(f) To fix and prescribe any form of application or procedure to be required of a local governmental unit for the purpose of any loan to be made to such governmental unit by the purchase of its municipal securities, and to fix the terms and conditions of any such loan and to enter into agreements with local governmental units with respect to any such loan;

(g) In order to assure the continued creditworthiness and fiscal stability of the local governmental units to which the bank shall make loans by the purchase of municipal securities thereof, the board may adopt, modify or amend rules and regulations of the bank which shall provide for all or certain of the following:

(i) Accounting systems and financial reporting standards for such local governmental units which will provide a uniform basis from which financial data may be obtained by the bank and furnished to investors;

(ii) Standards for debt management and budget procedures and practices;

(iii) Procedures relating to internal controls over the receipt, deposit, investment, transfer and disbursement of funds of such local governmental units so as to assure the proper application thereof;

(iv) Requirements for financial and economic feasibility studies or other studies or surveys with respect to revenue-producing enterprises or systems of such local governmental units or the management thereof or the rates, charges, rents or tolls for the use or service thereof; and

(v) Other matters relating to the fiscal stability and creditworthiness of such local governmental units.

Compliance with such rules and regulations of the bank may be required for local governmental units receiving financing from the bank, subject to such terms, conditions and exceptions as the board may from time to time determine to be practicable and to be necessary or appropriate to accomplish the purposes of this act.

HISTORY: Laws, 1986, ch. 455, § 12, eff from and after passage (approved April 10, 1986).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in (a). The reference to "Section 14 of this act" was changed to

"Section 31-25-27." The Joint Committee ratified the correction at its June 3, 2003, meeting.

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-25. Prohibited transactions.

Under this act the bank may not:

(a) Make loans of money to any person, firm or corporation or purchase securities issued by any person, firm or corporation other than a local governmental unit for investment;

(b) Emit bills of credit, or accept deposits of money for time or demand deposit, or administer trusts, or engage in any form or manner in, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association;

(c) Be or constitute a bank or trust company within the jurisdiction or under the control of any official of the state or the United States regulating such institutions; or

(d) Be or constitute a banker, broker or dealer in securities within the meaning of or subject to the provisions of any securities, securities exchange, or securities dealers law, of the United States of America or of the state or of any other state.

HISTORY: Laws, 1986, ch. 455, § 13, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-27. Powers of local governmental units to contract with bank; issuance of securities; pledges for repayment; personal liability of local governmental officials; validation of securities; waiver of defenses; fraudulent acts; agreements with regard to powers of State Tax Commission; certain local governmental units required to make certifications to Mississippi Development Bank before issuance of bonds; local governmental units authorized to borrow money from any United States government loan guarantee program.

(1) Each local governmental unit is hereby authorized and empowered to contract with the bank with respect to the bank's purchase of such local governmental unit's securities and such contract shall contain such terms and conditions as may be prescribed by the bank. Each local governmental unit is authorized and empowered to pay to the bank such fees and charges for services as the bank may prescribe.

(2) Each local governmental unit is hereby authorized to issue securities under the provisions of this act and to sell such securities to the bank to raise

money for any purpose or purposes set forth in Sections 21-27-23, 21-33-301, 21-33-325, 21-33-325.1, 21-33-326, 31-27-5, 17-17-301 et seq. and any other state law authorizing the issuance of local governmental unit debt, and for the purpose of refunding any securities issued under the provisions of this act or under the provisions of Section 21-27-11 et seq., or Section 21-33-301 et seq., or Section 31-27-1 et seq. Such securities may be issued in accordance with Sections 21-33-301, 21-33-303, 21-33-307, 21-33-309, 21-33-311, 21-33-313, 21-33-325, 21-33-325.1 and 21-33-326, or Sections 21-27-23 through 21-27-43 and Sections 21-27-47 through 21-27-71, or Sections 31-27-1 through 31-27-25, or Sections 17-5-3 through 17-5-11, or Sections 49-17-101 through 49-17-123, or Sections 17-17-301 through 17-17-349 or any other state law authorizing issuance of local governmental unit debt, as the case may be, unless otherwise specifically provided in this act; provided, however, the securities of any local governmental unit may be issued with such terms and provisions as may be necessary and appropriate in order to comply with the provisions of any loan agreement described in Section 49-17-87. Whenever securities shall be issued under this subsection, the governing authority may also pledge to the payment of principal of, premium, if any, and interest on such securities the revenues of any project to be constructed, improved or purchased with the proceeds thereof. Whenever any project is a part of a system or combined system, then all or any portion of the revenues of such system or combined system may be pledged to secure repayment of such securities as determined by the bank.

(3) Each local governmental unit is hereby authorized to issue securities to the bank to raise money for any purpose or purposes set forth in Section 19-9-1, 19-9-27 or 19-9-28 and for the purpose of refunding any securities issued under the provisions of this act or under the provisions of Section 19-9-1 et seq. Such securities may be issued in accordance with Sections 19-9-1, 19-9-3, 19-9-5, 19-9-7, 19-9-9, 19-9-11, 19-9-13, 19-9-15, 19-9-17, 19-9-27 and 19-9-28, or Sections 17-5-3 through 17-5-11, or Sections 49-17-101 through 49-17-123, as the case may be, unless otherwise specifically provided in this act; provided, however, the securities of any local governmental unit may be issued with such terms and provisions as may be necessary and appropriate in order to comply with the provisions of any loan agreement described in Section 49-17-87. Whenever securities shall be issued under this subsection, the board of supervisors of the county may also pledge to the payment of principal of, premium, if any, and interest on such securities the revenues of any project to be constructed, improved, repaired or purchased with the proceeds thereof. Whenever any project is a part of a system or combined system, then all or any portion of the revenues of such system or combined system may be pledged to secure repayment of such securities as determined by the bank.

(4) In addition, any local governmental unit is hereby authorized to issue securities to the bank to raise money for any purpose or purposes otherwise authorized by state law and for the purpose of refunding any securities issued under the provisions of this act or as otherwise authorized by state law including Section 49-17-83 et seq. Such securities may be issued in accordance with any other applicable provision of state law related to the issuance of

securities including Section 49-17-83 et seq. Whenever securities shall be issued under this subsection, the governing body of such local governmental unit may also pledge to the payment of principal of, premium, if any, and interest on such securities the revenues of any project to be constructed, improved or purchased with the proceeds thereof. Whenever any project is a part of a system or combined system, then all or any portion of the revenues of such system or combined system may be pledged to secure repayment of such securities as determined by the bank.

(5) Securities issued by a local governmental unit under the provisions of this act:

(a) May be sold only to the bank at private sale and may be sold at such price or prices, in such manner and at such times as may be agreed to by the bank and the local governmental unit, and the governing body of the local governmental unit may pay all expenses, premiums, fees and commissions which it may deem necessary and advantageous in connection with the issuance and sale thereof;

(b) Shall be secured as provided by Chapter 27, Title 21, Mississippi Code of 1972; Chapter 33, Title 21, Mississippi Code of 1972; or Chapter 9, Title 19, Mississippi Code of 1972, or other provisions of state law, and as provided in this act; and it is the intention of the Legislature that any pledge of earnings, revenues or other monies made by the local governmental unit shall be valid and binding from the time the pledge is made; that the earnings, revenues or other monies so pledged and thereafter received by the local governmental unit shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the local governmental unit irrespective of whether such parties have notice thereof; and neither the resolution nor any other instrument by which a pledge is created need be recorded;

(c) Neither the officers or members of the governing body of the local governmental unit nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof;

(d) Shall be issued for the purposes set forth in this act and shall include terms and conditions which meet the state law authorizing the issuance of such local governmental unit debt and/or such terms and conditions consistent with the requirements for issuance of Mississippi Development Bank Bonds under Section 31-25-37.

(6) Each local governmental unit issuing securities under the provisions of this act is hereby authorized and empowered in connection with the issuance of such securities to enter into any covenants, agreements as to defaults and agreements as to remedies of the bank for defaults with respect to such local governmental unit's operation, revenues, assets, monies, funds or property as may be prescribed by the bank.

(7) The proceeds of securities shall be deposited in one or more special funds established by resolution of the local governmental unit issuing the same

and shall be applied to the following: (a) the purpose for which the securities were issued; (b) the payment of all costs of issuance of the securities; (c) the payments of any fees and charges established by the bank; (d) the payment of interest on the securities for a period of time not greater than the period of time estimated to be required to complete the purpose for which the securities were issued; all to the extent provided by resolution of the governing body of the local governmental unit and approved by the bank. Such special fund shall be held by commercial banks qualified to act as depositories therefor.

(8) In the event the bank determines to issue bonds and in connection therewith to exercise the powers provided in subsection (7) of Section 31-25-37, and if the requirements of subsection (2), (3) or (4), as the case may be, of this section have been satisfied, a local governmental unit is authorized to issue its securities as provided in this section.

(9) Securities issued under this act may be validated in the manner and with the force and effect provided in Section 31-13-1 et seq.

(10) This act shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized hereby and shall be deemed and construed to be supplemental to any power conferred by other laws on local governmental units and not in derogation of any such powers.

(11) Any person who attempts to or obtains financial aid for a local governmental unit hereunder or who attempts to or sells securities of a governmental unit to the bank by false or misleading information or who shall by fraud attempt to obtain monies from the bank or its approval for the payment of monies or shall fraudulently attempt to or does prevent the collection of any monies due to the bank shall, upon conviction, be guilty of a felony for each offense.

(12) Upon the sale and issuance of any securities to the bank by any governmental unit, such governmental unit shall be held and be deemed to have agreed that in the event of the failure of such governmental unit to pay the interest on or the principal of any of such securities owned or held by the bank as and when due and payable, such governmental unit shall have waived any and all defenses to such nonpayment, and the bank upon such nonpayment shall thereupon constitute a holder or owner of such securities as being in default, and the bank may then and thereupon avail itself of all remedies, rights and provisions of law applicable in such circumstance, including, without limitation, any remedies or rights theretofore agreed to by the local governmental unit, and that all of the securities of the issue of securities of such governmental unit as to which there has been such nonpayment, shall for all of the purposes of this section be held and be deemed to have become due and payable and to be unpaid. The bank is hereby authorized and empowered to carry out the provisions of this section and to exercise all of the rights and remedies and provisions of law herein provided or referred to.

(13) Any local governmental unit which borrows from the bank is hereby authorized and empowered to agree in writing with the bank that, as provided in this subsection, the State Tax Commission or any state agency, department or commission created pursuant to state law shall (a) withhold all or any part

(as agreed by the local governmental unit) of any monies which such local governmental unit is entitled to receive from time to time pursuant to any law and which is in the possession of the State Tax Commission, or any state agency, department or commission created pursuant to state law and (b) pay the same over to the bank to satisfy any delinquent payments on any securities issued by such local governmental unit under the provisions of this act and any other delinquent payments due and owing the bank by such local governmental unit, all as the same shall occur. In the event the bank shall file a copy of such written agreement, together with a statement of delinquency, with the State Tax Commission, or any state agency, department or commission created pursuant to state law then the State Tax Commission or any state agency, department or commission created pursuant to state law shall immediately make the withholdings provided in such agreement from the amounts due the local governmental unit and shall continue to pay the same over to the bank until all such delinquencies are satisfied.

(14)(a) Except as otherwise provided in Section 31-25-28(7), (8) and (9), if the state or any agency thereof, the institutions of higher learning of the state or any education building corporation established for institutions of higher learning, borrows funds from the bank under Section 31-25-28 or sells its securities to the bank pursuant to this act, then such local governmental unit shall certify the following to the bank prior to the issuance of bonds:

(i) The legal authority for such local governmental unit to borrow funds; and

(ii) That such local governmental unit does not intend to request an additional appropriation from the Legislature to pay debt service on the loan or for such security.

(b) If the state or any agency thereof, the institutions of higher learning of the state or any education building corporation established for institutions of higher learning, does not make the certification required under paragraph (a) (ii) of this subsection, then such local governmental unit shall not borrow funds from the bank under Section 31-25-28 or sell its securities to the bank pursuant to this act unless an appropriation by the Legislature authorizes the payment of debt service for the first year of the loan or for such security.

(15) Any local governmental unit may borrow money from the bank loaned under any loan guaranty program of any department or agency of the United States, including the United States Department of Agriculture Rural Utility Services Water and Waste Disposal Guaranteed Loan Program and Community Programs Guaranteed Loan Program or any such successor guaranty programs.

(16) Notwithstanding any law to the contrary, each local governmental unit is authorized and empowered to contract with the bank for the exercise by the bank of any and all of the bank's powers as set out in this act with respect to the proceeds of such local governmental unit's securities or certificates of participation issued by such local governmental unit pursuant to any state law authorizing the issuance of local governmental unit debt.

(17) Subsections (15) and (16) of this section shall be deemed to provide all necessary authority for the doing of the things authorized thereby and shall be

liberally construed to accomplish the purposes and authorizations therein stated.

HISTORY: Laws, 1986, ch. 455, § 14; Laws, 1988, ch. 492; Laws, 1991, ch. 578, § 2; Laws, 1992, ch. 481 § 5; Laws, 2000, ch. 537, § 2; Laws, 2003, ch. 328, § 3; Laws, 2004, ch. 570, § 2; Laws, 2009, ch. 485, § 2; Laws, 2010, ch. 494, § 2, eff from and after passage (approved Apr. 7, 2010).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an enacting error in the first sentence of subsection (3). The word "Sections" was changed to "Section" preceding 19-9-1, 19-9-27 or 19-9-28. The Joint Committee ratified the correction at its July 8, 2004, meeting.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Authorization for bank to issue certain amount in revenue bonds for a regional solid waste authority and a county cooperative service district, see § 31-25-21.

Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-28. Purpose for which loan may be made.

(1) Local governmental units may borrow money or receive grants from the bank for any of the purposes set forth in this section or Section 31-25-20(g) and pay to the bank such fees and charges for services as the bank may prescribe. Whenever any such loan is made to a local governmental unit, such local governmental unit may use available revenues for the repayment of the principal of, premium, if any, and interest on such loan, and pledge such available revenues or monies for the repayment of the principal of, premium, if any, and interest on such loan. It is the intention of the Legislature that any such pledge of revenues or other monies shall be valid and binding from the date the pledge is made; that such revenues or other monies so pledged and thereafter received by the local governmental unit shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the local governmental unit irrespective of whether such parties have notice thereof; and neither the resolutions, contracts or any other instrument by which a pledge is created need be recorded.

(2) Local governmental units may contract with the bank with respect to any such loan and such contract shall contain such terms and conditions as may be prescribed by the bank.

(3) Local governmental units may in connection with any such loan enter into any covenants and agreements with respect to such local governmental unit's operations, revenues, assets, monies, funds or property, or such loan, as may be prescribed by the bank.

(4) Upon the making of any such loan by the bank to any local governmental unit, such local governmental unit shall be held and be deemed to have agreed that if such governmental unit fails to pay the principal of, premium, if any, and interest on any such loan as when due and payable, such governmental unit shall have waived any and all defenses to such nonpayment, and the bank, upon such nonpayment, shall thereupon avail itself of all remedies, rights and provisions of law applicable in such circumstance, including, without limitation, any remedies or rights theretofore agreed to by the local governmental unit, and that such loan shall for all of the purposes of this section, be held and be deemed to have become due and payable and to be unpaid. The bank may carry out the provisions of this section and exercise all of the rights and remedies and provisions of law provided or referred to in this section and of all other applicable laws of the state.

(5) Any local governmental unit that borrows from the bank under this section may agree in writing with the bank that, as provided in this subsection, the Department of Revenue or any state agency, department or commission created pursuant to state law shall (a) withhold all or any part (as agreed by the local governmental unit) of any monies that such local governmental unit is entitled to receive from time to time pursuant to any law and that is in the possession of the Department of Revenue or any state agency, department or commission created pursuant to state law and (b) pay the same over to the bank to satisfy any delinquent payments on any such loan made to such local governmental unit under the provisions of this section and any other delinquent payments due and owing the bank by such local governmental unit, all as the same shall occur. If the bank files a copy of such written agreement, together with a statement of delinquency, with the Department of Revenue or any state agency, department or commission created pursuant to state law, then the Department of Revenue or any state agency, department or commission created pursuant to state law shall immediately make the withholdings provided in such agreement from the amounts due the local governmental unit and shall continue to pay the same over to the bank until all such delinquencies are satisfied.

(6) Before authorizing any loan for any of the purposes enumerated in Section 31-25-20(e), the governing authority of the local governmental unit shall adopt a resolution declaring its intention so to do, stating the amount of the loan proposed to be authorized and the purpose for which the loan is to be authorized, and the date upon which the loan will be authorized. Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such local governmental unit. The first publication of such resolution shall be made not less than twenty-one (21) days before the date fixed in such resolution for the authorization of the loan and the last publication shall be made not more than seven (7) days before such date. If no newspaper is published in such local governmental unit, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in such local governmental unit and, in addition, by posting a copy of such resolution for at least twenty-one

(21) days next preceding the date fixed therein at three (3) public places in such local governmental unit. If fifteen percent (15%) of the qualified electors of the local governmental unit or fifteen hundred (1500), whichever is the lesser, file a written protest against the authorization of such loan on or before the date specified in such resolution, then an election on the question of the authorization of such loan shall be called and held as otherwise provided for in connection with the issuance of general obligation indebtedness of such local governmental unit. Notice of such election shall be given as otherwise required in connection with the issuance of general obligation indebtedness of such local governmental unit. If three-fifths (3/5) of the qualified electors voting in the election vote in favor of authorizing the loan, then the governing authority of the local governmental unit shall proceed with the loan; however, if less than three-fifths (3/5) of the qualified electors voting in the election vote in favor of authorizing the loan, then the loan shall not be incurred. If no protest be filed, then such loan may be entered into by the local governmental unit without an election on the question of the authorization of such loan, at any time within a period of two (2) years after the date specified in the resolution. However, the governing authority of any local governmental unit in its discretion may nevertheless call an election on such question, in which event it shall not be necessary to publish the resolution declaring its intention to authorize such loan as provided in this subsection.

(7) [Repealed.]

(8)(a) In connection with any refunding of the Ten Million Five Hundred Seventy Thousand Dollars ($10,570,000.00), State of Mississippi, Department of Rehabilitation Services, Certificates of Participation (State of Mississippi, Department of Rehabilitation Services Project) dated August 1, 1993, the bank may issue its bonds to provide for such refunding and the Department of Rehabilitation Services may borrow money from the bank for the purpose of providing for the refunding of such Certificates of Participation. The Department of Rehabilitation Services may contract with the bank with respect to any loan from the bank under this paragraph (a), to provide for the refunding of such Certificates of Participation and such loan from the bank may include any terms and conditions as provided for in this section. In connection with the refunding of the Certificates of Participation pursuant to this paragraph (a), such refunding shall result in an overall net present value savings to maturity of not less than two percent (2%) of the Certificates of Participation being refunded.

(b) The Department of Rehabilitation Services may borrow money from the bank in an amount not to exceed Seven Million Dollars ($7,000,000.00) for the purpose of construction at, and repair and renovation, furnishing and equipping of, the department's office building located in Madison, Mississippi.

(c) In connection with any loan under this subsection (8), the Department of Rehabilitation Services shall not be required to meet the requirements of Section 31-25-27(14).

(9) [Repealed.]

(10) This section shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized by this section and shall be deemed and construed to be supplemental to any power conferred by other laws on local governmental units and not in derogation of any such powers. Any loan made pursuant to the provisions of this section shall not constitute an indebtedness of the local governmental unit within the meaning of any constitutional or statutory limitation or restriction. In connection with a loan under this chapter, a local governmental unit shall not be required to comply with the provisions of any other law except as provided in this section.

HISTORY: Laws, 1996, ch. 470, § 2; Laws, 1997, ch. 302, § 6; Laws, 2004, ch. 570, § 1; Laws, 2006, ch. 411, § 1; Laws, 2010, ch. 494, § 1; Laws, 2011, ch. 308, § 2, eff from and after July 1, 2011.

Editor's Notes — Subsection (7), which authorized the Department of Environmental Quality to borrow money from the bank for any purpose authorized by Chapter 25, Title 31, or for the purpose of funding loan programs (including revolving loan programs) for the Department of Environmental Quality, was repealed by its own terms, effective July 1, 2014.

Subsection (9), which authorized the State Department of Health to borrow money from the bank for any purpose authorized by Chapter 25, Title 31, or for the purpose of funding loan programs (including revolving loan programs) for the State Department of Health, was repealed by its own terms, effective July 1, 2014.

§ 31-25-29. Intergovernmental cooperation.

(1) The bank may obtain the aid and cooperation of the local governmental units, including those not being assisted by the bank through the purchase of the municipal securities thereof, and the bank and such local governmental units shall have the power to enter into such agreements and arrangements as they deem necessary or advisable to obtain for the bank such aid and cooperation.

(2) In addition to other powers of intergovernmental cooperation granted herein, all officers, departments, boards, agencies, divisions and commissions of the state are authorized and empowered to render any and all of such services to the bank as may be within the area of their respective governmental functions as fixed or established by law and as may be requested by the bank. All of such officers, departments, boards, agencies, divisions and commissions are authorized and directed to comply promptly with any such reasonable request by the bank as to the making of any study or review as to the desirability, need, cost or expense with respect to any local facility, or the financial feasibility thereof or the financial or fiscal responsibility or ability in connection therewith of any local governmental unit making application for financing by the bank. The cost and expense of any services requested by the bank shall, at the request of the officer, department, board, agency, division or commission rendering such services, be met and provided for by the bank.

(3) The bank is authorized to accept such monies as may be appropriated by the state at any time or from time to time.

HISTORY: Laws, 1986, ch. 455, § 15, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-31. Bonds issued by Bank as general or special obligations of Bank; issuance of bonds as affecting State's obligation to levy or collect taxes or assessments; liability of State for payment of principal or interest.

(1) Except as otherwise provided in subsection (2) of this section, bonds issued by the bank under this chapter shall be general obligations of the bank or, if the resolution of the board authorizing their issuance shall so provide, shall be special obligations thereof payable solely from payments of principal, interest and redemption payments on the municipal securities being purchased with their proceeds or from such payments on any or all municipal securities held or to be held by the bank or from other funds available to the bank as provided in such resolution or by any provision of law. Bonds issued by the bank shall not constitute or become an indebtedness, or a debt or liability of the state or of any local governmental unit nor shall any such entity other than the bank (in the case of its general obligations) be liable thereon, nor shall bonds or any powers granted herein to the state or agency thereof or local governmental unit constitute the giving, pledging or loaning of the faith and credit of the state or such agency thereof or of such local governmental unit. The issuance of bonds hereunder shall not directly, indirectly or contingently obligate the state to levy or collect any form of taxes or assessments therefor or to create any indebtedness payable out of taxes or assessments or make any appropriation for their payment nor to pledge the taxing power of the state and such levy or pledge is prohibited; however, notwithstanding the foregoing, nothing in this section shall be construed to prohibit any local governmental unit (including the state or any agency thereof) from assuming obligations in accordance with and subject to the limitations of this act or from issuing and selling municipal securities to the bank in accordance herewith. Nothing in this act shall be construed to authorize the bank to create a debt of the state within the meaning of the constitution or statutes of the state or authorize the bank to levy or collect taxes or assessments and bonds issued by the bank pursuant to the provisions of this act are payable and shall state plainly on their face that they are payable solely as general obligations of the bank, or solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor, as the case may be, and are not a debt or liability of the state. The state shall not in any event be liable for the payment of the principal or interest on any bonds of the bank or for the performance of any pledge, mortgage, obligations or agreement of any kind whatsoever which may be undertaken by the bank. No breach of any such pledge, mortgage, obligation or agreement shall impose any pecuniary liability

upon the state or any charge upon its general credit or against its taxing power. Nothing in this subsection shall be construed to prohibit any local governmental unit (including the state or any agency thereof) from assuming obligations in accordance with and subject to the limitations of this act or from issuing and selling any security to the bank in accordance with this act.

(2) Bonds issued by the bank under Section 31-25-21(k) for the purposes provided in Section 31-25-20(g) shall be general obligations of the State of Mississippi, and for the payment thereof the full faith and credit of the State of Mississippi is irrevocably pledged. If the funds appropriated by the Legislature are insufficient to pay the principal of and the interest on such bonds as they become due, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated. All such bonds shall contain recitals on their faces substantially covering the provisions of this subsection (2).

HISTORY: Laws, 1986, ch. 455, § 16; Laws, 1997, ch. 302, § 2; Laws, 2000, ch. 537, § 3, eff from and after passage (approved May 5, 2000).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-33. Exemption from taxation.

As set forth in the declaration of finding and purpose herein, the bank will be performing an essential governmental function in the exercise of the powers conferred upon it by this act, and the bonds of the bank issued pursuant to this act, and the income therefrom including any profit made on the sale thereof and all its fees, charges, gifts, grants, revenues, receipts, and other moneys received, pledged to pay or secure the payment of such bonds shall at all times be free from taxation of every kind by the state and by the municipalities and all other political subdivisions of the state.

The property of the bank and its income and operation shall be exempt from taxation or assessments upon any property acquired or used by the bank under the provisions of this act.

HISTORY: Laws, 1986, ch. 455, § 17, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-35. Report; audit of books and accounts.

The bank shall submit to the Governor within ninety (90) days after the end of its fiscal year a complete and detailed report setting forth:

(a) Its operations and accomplishments;

(b) Its receipts and expenditures during such fiscal year;

(c) Its assets, including an itemized list of municipal securities held by it, and liabilities at the end of its fiscal year, including the status of reserve or other special funds together with a statement of changes in its assets, liabilities and funds during such fiscal year; and

(d) A schedule of its bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

The bank shall cause an audit of its books and accounts to be made at least once a year by certified public accountants and the cost thereof shall be considered an expense of the bank and a copy thereof shall be filed with the State Treasurer.

HISTORY: Laws, 1986, ch. 455, § 18, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-37. Issuance of bonds by bank for corporate purposes.

(1) The bank shall have the power, from time to time, to issue bonds for any of its corporate purposes, including without limitation to pay bonds, including the interest thereon, and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. The refunding bonds may be exchanged for bonds to be refunded or sold and the proceeds applied to the purchase, redemption or payment of such bonds.

(2) The bank shall have power to make contracts for the future sale from time to time of bonds, pursuant to which the purchaser shall be committed to purchase and the bank shall have the power to pay such consideration as it shall deem proper for such commitments.

(3) Except as otherwise provided in this subsection (3), every issue of bonds of the bank shall be general obligations of the bank payable out of any revenues or funds of the bank, subject only to the provisions of the resolution of the bank authorizing the issuance of, or to any agreements with the holders of, particular bonds pledging any particular revenues or funds. Any such bonds may be additionally secured by a pledge of any grants, subsidies, contributions, funds or moneys from the United States of America or the state or any agency or instrumentality thereof, or any other governmental unit. However, bonds issued by the bank under Section 31-25-21(k) for the purposes provided in Section 31-25-20(g) shall be general obligations of the State of Mississippi, and for the payment thereof the full faith and credit of the State of Mississippi is irrevocably pledged. If the funds appropriated by the Legislature are insufficient to pay the principal of and the interest on such bonds as they become due, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated. All such state general obligation bonds shall contain recitals on their faces substantially covering these provisions.

(4) Any law to the contrary notwithstanding, a bond issued under this chapter is fully negotiable and each holder or owner of a bond, or of any coupon appurtenant thereto, by accepting the bond or coupon shall be conclusively deemed to have agreed that the bond or coupon is fully negotiable for those purposes subject only to any provisions of bonds for registration.

(5) Bonds of the bank shall be authorized by resolution of the board of the bank, may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof, and shall bear such date or dates, mature at such time or times, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premiums, as such resolution or resolutions may provide, except that no bond shall mature more than forty (40) years from the date of its issue. The bonds may bear interest at such rate or rates as the bank may by resolution determine, and such rate or rates shall not be limited by any other law relating to the issuance of bonds except that the interest rate on any bonds issued as general obligation bonds of the State of Mississippi shall not exceed the limits set forth in Section 75-17-101. The bonds and coupons appertaining thereto may be executed in such manner as shall be determined by the bank. In case any of the members or officers of the bank whose signatures appear on any bonds or coupons shall cease to be such members or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such members or officers had remained in office until such delivery.

(6) Bonds of the bank may be sold at public or private sale at such time or times and at such price or prices as the bank shall determine.

(7) In connection with the issuance of bonds, the board of the bank may delegate to the executive director of the bank the power to determine the time or times of sale of such bonds, the amounts of such bonds, the maturities of such bonds, the rate or rates of interest of such bonds, and such other terms and details of the bonds, as may be determined by the board of the bank; provided, however, the board of the bank shall have adopted a resolution making such delegation and such resolution shall specify the maximum amount of the bonds which may be outstanding at any one time, the maximum rate of interest or interest rate formula (to be determined in the manner specified in such resolution) to be incurred through the issuance of such bonds and the maximum maturity date of such bonds. The board of the bank may also provide in the resolution authorizing the issuance of such bonds, in its discretion, (a) for the employment of one or more persons or firms to assist the bank in the sale of the bonds, (b) for the appointment of one or more banks or trust companies, either within or without the State of Mississippi, as depository for safekeeping, and as agent for the delivery and payment, of the bonds, (c) for the refunding of such bonds, from time to time, without further action by the board of the bank, unless and until the board of the bank revokes such authority to refund, and (d) other terms and conditions as the board of the

bank may deem appropriate. In connection with the issuance and sale of such bonds, the board of the bank may arrange for lines of credit with any bank, firm or person for the purpose of providing an additional source of repayment for bonds issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable bonds or other evidences of indebtedness, containing such terms and conditions as the board of the bank may authorize in the resolution approving the same, and such notes or other evidences of indebtedness shall constitute bonds issued under their act. The board of the bank is authorized to pay all costs of issuance of the bonds.

(8) Neither the members of the bank nor any other person executing the bank's bonds issued pursuant to this chapter shall be liable personally on such bonds by reason of the issuance thereof.

(9) Bonds of the bank may be issued under this chapter without obtaining the consent of any department, division, commission, board, body, bureau or agency of the state, and without any other proceeding or the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter and by provisions of the resolution authorizing such bonds.

(10) Bonds of the bank may be validated in accordance with the provision of Sections 31-13-1 through 31-13-11 in the same manner as provided therein for bonds issued by a municipality. Any such validation proceedings shall be held in the First Judicial District of Hinds County. Notice thereof shall be given by publication in any newspaper published in the City of Jackson and of general circulation through the state.

HISTORY: Laws, 1986, ch. 455, § 19; Laws, 1997, ch. 302, § 3, eff from and after passage (approved February 24, 1997).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-39. Resolution of Board authorizing or relating to issuance of bonds; contracts.

In any resolution of the board of the bank authorizing, or relating to the issuance of any bonds, the board, in order to secure the payment of the bonds and in addition to its other powers, may covenant and contract with the holders of the bonds:

(a) To pledge to any payment or purpose all or any part of its revenues to which its right then exists or may thereafter come into existence, and the moneys derived therefrom, and the proceeds of any bonds including, but not limited to, any or all municipal securities held by the bank. Any such bonds may be additionally secured by a pledge of any grants, subsidies, contributions, or other funds or moneys from the United States or the state or any agency or instrumentality thereof, or any other governmental unit;

(b) To covenant against pledging all or any part of its revenues, or against permitting or suffering any lien on those revenues or its property;

(c) To pledge all or any part of the assets of the bank to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with holders of bonds as may then exist;

(d) To covenant as to the use and disposition of any payments of principal or interest received by the bank on municipal securities or other investments held by the bank;

(e) To covenant as to establishment of reserves or sinking funds, the making of provision for them and the regulation and disposition thereof;

(f) To covenant with respect to or against limitations on any right to sell or otherwise dispose of any property of any kind;

(g) To covenant as to any bonds to be issued by the bank, or by the local governmental unit the municipal securities of which are being purchased with the proceeds of an issue of bonds or notes of the bank, and their limitations and their terms and conditions and as to the custody, application and disposition of their proceeds, and pledging such proceeds to secure payment of bonds or any issue thereof;

(h) To contract with bond or note holders respecting the terms and conditions of agreements with the state or local governmental units made pursuant to the provisions of this chapter;

(i) To covenant as to the issuance of additional bonds or as to limitations on the issuance of additional bonds and on the incurring of other debts;

(j) To covenant as to the payment of the principal of or interest on the bonds, as to the sources and methods of payment, as to the rank or priority of any bonds with respect to any lien of security or as to the acceleration of the maturity of any bonds;

(k) To provide for the replacement of lost, stolen, destroyed or mutilated bonds;

(*l*) To covenant against extending the time for the payment of bonds or interest thereon;

(m) To covenant as to the redemption of bonds and privileges of exchange thereof for the other bonds of the bank;

(n) To covenant as to any charges to be established and charged, the amount to be raised each year or other period of time by charges or other revenues and as to the use and disposition to be made thereof;

(o) To limit the amount of money to be expended by the bank for operating expenses of the bank;

(p) To covenant to create or authorize the creation of special funds or moneys to be held in pledge or otherwise for operating expenses, payment or redemption of bonds, reserves or other purposes and as to the use and disposition of the moneys held in those funds;

(q) To establish the procedures, if any, by which the terms of any contract or covenant with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which the consent may be given;

(r) To covenant as to the custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;

(s) To covenant as to the time and manner of enforcement or restraint from enforcement of any rights of the bank arising by reason of or with respect to nonpayment of principal or interest of any municipal securities;

(t) To provide for the rights and liabilities, powers and duties arising upon the breach of any covenant, condition or obligation and to prescribe the events of default and the terms and conditions upon which any or all of the bonds or other obligations of the bank shall become or may be declared due and payable before maturity and the terms and conditions upon which the declaration and its consequences may be waived or rescinded;

(u) To vest in a trustee or trustees within or without the state such property, rights, powers and duties of any trustee as the bank may determine, which may include any of the rights, powers and duties of any trustee appointed by the holders of any bonds and to limit or abrogate the right of the holders of any bonds of the bank to appoint a trustee under this chapter or limiting the rights, powers and duties of the trustee;

(v) To pay the costs or expenses incident to the enforcement of the bonds or of the resolution or of any covenant or agreement of the bank with the holders of its bonds;

(w) To agree with any corporate trustee which may be any trust company or bank having the powers of a trust company within or without the state, as to the pledging or assigning of any revenues or funds to which the bank has any rights or interest, and may further provide for such other rights and remedies exercisable by the trustee as may be proper for the protection of the holders of any bonds of the bank and not otherwise in violation of law, and which agreement may provide for the restriction of the rights of any individual holder of bonds of the bank;

(x) To appoint and to provide for the duties and obligations of a paying agent or paying agents, or such other fiduciaries as the resolution may provide within or without the state;

(y) To limit the rights of the holders of any bonds to enforce any pledge or covenant securing bonds;

(z) To fix, or agree to fix such asset coverage or other ratios with respect to the security of its bonds and notes as the bank may deem prudent or otherwise advisable; and

(aa) To make covenants other than and in addition to the covenants herein expressly authorized, of like or different character, and to make covenants to do or refrain from doing such things as may be necessary, or covenant and desirable, in order better to secure bonds or which, in the absolute discretion of the bank, will tend to make bonds more marketable, notwithstanding that the covenants or things may not be enumerated herein.

In the discretion of the bank, the bonds may be secured by a trust indenture by and between the bank and a corporate trustee. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the bank in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. The bank may provide by such trust indenture for the payment of the proceeds of the bonds and revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the bank. If the bonds shall be secured by a trust indenture, the bondholders shall not have the right to appoint a separate trustee to represent them.

Bonds issued by the bank under Section 31-25-21(k) for the purposes provided in Section 31-25-20(g) shall be general obligations of the State of Mississippi, and for the payment thereof the full faith and credit of the State of Mississippi is irrevocably pledged. If the funds appropriated by the Legislature are insufficient to pay the principal of and the interest on such bonds as they become due, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated. All such bonds shall contain recitals on their faces substantially covering the provisions of this paragraph.

HISTORY: Laws, 1986, ch. 455, § 20; Laws, 1997, ch. 302, § 4, eff from and after passage (approved February 24, 1997).

Cross References — Application of this section to agreement to make secure and marketable bonds issued by the development bank, see § 31-25-103.

Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-41. Pledge of revenues or other moneys.

Any pledge of revenues or other moneys made by the bank shall be valid and binding from the time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the bank shall immediately be subject thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having notice thereof. Neither the resolution nor any other instrument by which a pledge is created or any statement with respect thereto need be filed or recorded, except in the records of the bank.

HISTORY: Laws, 1986, ch. 455, § 21, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-43. Establishment of funds or accounts.

The bank may establish such funds or accounts as may be, in its discretion, necessary or desirable to further the accomplishment of the purposes of the bank or to comply with the provisions of any agreement made by or any resolution of the bank.

HISTORY: Laws, 1986, ch. 455, § 22, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-45. Purchase of bonds by Bank.

The bank, subject to such agreements with bondholders as may then exist, shall have power out of any funds available therefor to purchase bonds of the bank, which shall thereupon be cancelled, at a price or prices as shall be determined by the bank.

HISTORY: Laws, 1986, ch. 455, § 23, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81.

§ 31-25-47. Agreements or contracts for safekeeping of municipal bonds or other investments.

The bank may enter into agreements or contracts with any bank, trust companies, banking or financial institutions within or without the state as may be necessary, desirable or convenient in the opinion of the bank for rendering services to the bank in connection with the care, custody or safekeeping of municipal bonds or other investments held or owned by the bank and services in connection with the payment or collection of amounts payable as to principal or interest, and for services in connection with the delivery to the bank of municipal bonds or other investments purchased by it or sold by it, and to pay the cost of those services. The bank may also, in connection with any of the services to be rendered by any banks, trust companies or banking or financial institutions as to the custody and safekeeping of any of its municipal bonds or investments, require security in the form of collateral bonds, surety agreements or security agreements in such form and amount as, in the opinion of the bank, is necessary or desirable for the purpose of the bank.

HISTORY: Laws, 1986, ch. 455, § 24, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-49. Reservation of State power.

The state does hereby pledge to and agree with the holders of any bonds issued by the bank under this act that the state will not limit or alter the rights hereby vested in the bank to fulfill the terms of any agreements made with the said holders thereof or in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met with any action or proceeding by or on behalf of such holders, are fully met and discharged. The bank is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds.

HISTORY: Laws, 1986, ch. 455, § 25, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-51. Bonds of bank as legal investments; authorized investments by bank.

(1) The bonds of the bank shall be legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest funds, including capital, in their control or belonging to them. The notes and bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivisions of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

(2) Notwithstanding the provisions of any law to the contrary, to invest money of the bank, including proceeds from the sale of any bonds, notes, any securities or certificates of participation:

(a) In obligations of any municipality or the state or the United States of America;

(b) In obligations the principal and interest of which are guaranteed by the state or the United States of America;

(c) In obligations of any corporation wholly owned by the United States of America;

(d) In obligations of any corporation sponsored by the United States of America which is, or may become, eligible as collateral for advances to member banks as determined by the Board of Governors of the Federal Reserve System;

(e) In obligations of insurance firms or other corporations whose investments are rated "AA" or better by recognized rating companies;

(f) In certificates of deposit or time deposits of qualified depositories of the state as approved by the State Depository Commission, secured in such manner, if any, as the corporation shall determine;

(g) In contracts for the purchase and sale of obligations of the type specified in items (a) through (e) above;

(h) In repurchase agreements secured by obligations specified in items (a) through (e) above; and

(i) In money market funds, the assets of which are required to be invested in obligations specified in items (a) through (f) above.

HISTORY: Laws, 1986, ch. 455, § 26; Laws, 1992, ch. 481 § 6; Laws, 2003, ch. 328, § 4, eff from and after passage (approved Mar. 7, 2003).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-53. Chapter provisions as cumulative.

Neither this act nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the bank might otherwise have under any laws of this state, and this act is cumulative to any such powers. This act does and shall be construed to provide complete additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. No proceedings, notice or approval shall be required for the issuance of any bonds, notes and other obligations or any instrument as security therefor, except as in this act.

HISTORY: Laws, 1986, ch. 455, § 27, eff from and after passage (approved April 10, 1986).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-55. Savings clause.

If any section, subsection, paragraph, sentence, clause or provision of this act shall be unconstitutional or ineffective, in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, subdivision, paragraph, sentence, clause or provision shall on account thereof be deemed invalid or ineffective.

HISTORY: Laws, 1986, ch. 455, § 28, eff from and after passage (approved April 10, 1986).

ARTICLE 3.

BONDS.

Sec.
31-25-101. Definitions.
31-25-103. Deposits into revolving fund; agreements; security; pledge of payments; recordation; enforcement of interest; resolution.

Sec.
31-25-105. Establishment of debt service reserve funds; disposition of moneys in funds; reserve requirements; appropriations for funds.
31-25-107. Joint legislative committee.

§ 31-25-101. Definitions.

For the purposes of this article, the following words and phrases shall have the meaning ascribed in this section unless the context clearly indicates otherwise:

(a) "Bank" means the Mississippi Development Bank created pursuant to Section 31-25-1 et seq., Mississippi Code of 1972.

(b) "Bonds" means bonds, notes and any other evidence of indebtedness.

(c) "Commission" means the Mississippi Commission on Environmental Quality.

(d) "Department" means the Mississippi Department of Environmental Quality.

(e) "Emergency fund" means the Water Pollution Control Emergency Loan Fund created under Section 49-17-86.

(f) "Revolving fund" means the Water Pollution Control Revolving Fund created under Sections 49-17-81 through 49-17-89.

(g) "State" means the State of Mississippi.

HISTORY: Laws, 1989, ch. 522, § 1; Laws, 1996, ch. 455, § 6, eff from and after October 1, 1996.

Cross References — Mississippi Department of Environmental Quality generally, see §§ 49-2-1 et seq.

Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-103. Deposits into revolving fund; agreements; security; pledge of payments; recordation; enforcement of interest; resolution.

(1) The commission acting through the department is hereby authorized, in connection with the issuance of bonds by the Mississippi Development Bank, to provide funds to deposit into the revolving fund and to enter into agreements pursuant to which such bonds shall be made payable, as to both principal, premium, if any, and interest, from such of the income, proceeds, revenues and funds from time to time in or payable into the revolving fund as shall be specified in such agreement. In the discretion of the commission, such bonds may be further secured by a mortgage, trust agreement, trust indenture or assignment among the bank, the commission and a trustee, which trustee (and any depository specified in any mortgage, trust agreement or assignment) shall be such persons or corporations as the bank or the commission shall designate, including nonresidents of Mississippi and banks and trust companies incorporated under the laws of the United States or the laws of other states of the United States, which nonresident banks or trust companies may

enter into such mortgages, trust agreements and assignments and perform all obligations under and related to such mortgages, trust agreements and assignments without being required to qualify to do business in the State of Mississippi, or to make any filings or take any other action as a result of acting as trustee under any applicable laws of the State of Mississippi and regardless of whether they shall have so qualified or made such filings or taken such action. Such agreement, trust indenture, assignment or mortgage may include any provisions authorized pursuant to Section 31-25-39, any other covenants deemed necessary to make such bonds secure and marketable and such provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law, including, but without limitation, covenants regarding: the application of the bond proceeds and the procedures therefor; the pledging, application and securing of the income, proceeds, revenues, funds, property or other collateral (or any combination thereof) pledged to the repayment of such bonds; the creation and maintenance of reserves; the investment of funds; the issuance of additional bonds for any authorized purposes which shall be secured by the income, proceeds, revenues, funds, property or other collateral (or any combination thereof) pledged thereunder for such bonds to the extent provided therein; the operation and maintenance of facilities; accounts and audits; the sale of properties; remedies of bondholders; requirements for local participation or funding of part of the costs of projects from other sources; limitations on the percentage of costs of a project which may be paid with loans from the revolving fund; maximum amounts for any loan from the revolving fund; interest rates, methods for computing interest rates, or criteria to be applied in determining interest rates, with respect to loans; maximum terms for loans; criteria applicable to determining amortization schedules for loans; requirements for a dedicated source of revenue for repayment of loans; conditions under which proceeds of a loan may be used to purchase or refinance existing debt obligations; other criteria applicable to determining eligibility for a loan; the vesting in a trustee or trustees of such powers and rights as may be necessary to secure the bonds and the income, proceeds, revenues, funds, property or other collateral (or any combination thereof) from which they are payable; the terms and conditions upon which bondholders may exercise their rights and remedies; the definition of an event of default; and the consequences and remedies upon the occurrence of an event of default, including without limitations, the exercise by or on behalf of the bondholders of rights of secured parties under the Mississippi Uniform Commercial Code or otherwise generally available to secured parties or the appointment of a receiver, by any court of competent jurisdiction, to administer any properties and facilities pledged thereunder, including authority to sell or make contracts for the sale of any services, facilities or commodities or to renew such contracts, subject to the approval of the court appointing the receiver, and with power to provide for the payment of such bonds outstanding, or the payment of operating expenses, and to apply the income and revenues to the payment of the bonds and interest thereon in accordance with the resolution authorizing the issuance of such bonds or the mortgage, assignment, trust indenture or other instrument. The powers herein granted may be exercised whether or not a trust agreement is entered into and, if no trust agreement is entered into, such provisions as are above authorized may be set out in a resolution of the commission or an agreement between the commission and the bank.

(2) All income, proceeds, revenues, funds, property or other collateral (or any combination thereof) pledged to the payment of such bonds shall be subject to a lien in favor of the holders of such bonds, and all such income, proceeds, revenues, funds, property or other collateral (or any combination thereof) shall be immediately subject to such lien without any physical delivery thereof or further act by the bank, the commission or the state and such lien shall be effective as against all parties asserting claims against the bank, the commission, the state or any agency thereof, whether by way of tort, contract or otherwise, whether or not such parties may have had notice of such lien. The mortgages, assignments, trust indentures or other instruments creating such pledge need not be filed or recorded except in the official minutes of the State Bond Commission.

(3) Monies in the revolving fund shall be subject to such restrictions, if any, as may be contained in any agreement or resolution referred to in subsection (1) of this section or any agreements executed in connection with any guarantees, bond insurance, letters of credit or other credit enhancements relating to such bonds.

(4) Any holder of bonds issued under the provisions of this article or of any interest coupons appertaining thereto may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights granted under any agreement, or under any resolution, and may enforce and compel performance of all duties required by this article to be performed, in order to provide for the payment of bonds and interest thereon.

(5) Any resolution relating to the issuance of bonds under the provisions of this article shall become effective immediately upon its adoption by the bank, and any such resolution may be adopted at any regular, special or recessed meeting of the commission by a majority of its members. In any suit, action or proceeding involving the validity or enforceability of any bond issued under this article, or the security therefor, any such bond reciting in substance that it has been issued pursuant to this article shall be conclusively deemed to have been issued for such purpose.

(6) The state does hereby covenant with the holders of any such bonds that it will not, while any such bonds shall be outstanding, limit or diminish the right and power of any political subdivision to establish, maintain and collect rates, fees, rentals and other charges pledged to the payment of such bonds, or the power of the commission to fulfill any covenants made with such bondholders.

HISTORY: Laws, 1989, ch. 522, § 3; Laws, 1991, ch. 578, § 3; Laws, 1996, ch. 455, § 7, eff from and after October 1, 1996.

Cross References — Applicability of Mississippi Water Pollution Control Revolving

Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.
Uniform Commercial Code, see §§ 75-1-101 et seq.

§ 31-25-105. Establishment of debt service reserve funds; disposition of moneys in funds; reserve requirements; appropriations for funds.

(1) In addition to any other funds it may establish, the Mississippi Development Bank may, by resolution, establish one or more special funds pursuant to this section, referred to herein as "debt service reserve funds," and may pay into such debt service reserve funds:

(a) Any monies appropriated and made available by the state for the purposes of such debt service reserve funds;

(b) Any proceeds from the sale of notes or bonds to the extent provided in the resolutions of the bank authorizing the issuance thereof; and

(c) Any monies which may be made available to the bank from any other sources for the purposes of such debt service reserve funds.

(2) So long as there are bonds outstanding secured by a debt service reserve fund created by this section, all monies held in any debt service reserve fund, except as otherwise permitted in this section, shall be used solely for the payment of the principal of the bonds or of the sinking fund payments mentioned in this section with respect to such bonds, the purchase or redemption of such bonds, the payment of interest on such bonds, or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; except that monies in any such funds shall not be withdrawn at any time in such amount as would reduce such fund to less than the debt service reserve fund requirement, except for the purpose of making with respect to such bonds principal, interest, redemption premium and sinking fund payments for the payment of which other monies of the bank are not available. Except to the extent monies in a debt service reserve fund are needed to satisfy a debt service reserve fund requirement, the amounts on deposit in such debt service reserve fund may be used for any corporate purposes of the bank in accordance with state and federal laws.

(3) The bank may provide by resolution for the establishment of a debt service reserve fund requirement for any debt service reserve fund established pursuant to this section.

(4) The chairman of the bank shall, on or before January 1 of each year, make and deliver to the Governor of the state his certificate, stating the sum, if any, required to restore each debt service reserve fund to the debt service reserve fund requirement. The Governor shall transmit to the State Legislature a request for the amount, if any, required to restore each debt service reserve fund to the debt service reserve fund requirement. The State Legislature may, but shall not be required to, make any such appropriations so requested. All sums appropriated by the State Legislature for such restoration and paid shall be deposited by the bank in each such debt service reserve fund. Except as otherwise provided in this subsection (4), nothing provided in this

section shall create or constitute a debt or liability of the state. Bonds issued by the bank under Section 31-25-21(k) for the purposes provided in Section 31-25-20(g) shall be general obligations of the State of Mississippi, and for the payment thereof the full faith and credit of the State of Mississippi is irrevocably pledged. If the funds appropriated by the Legislature are insufficient to pay the principal of and the interest on such bonds as they become due, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated.

(5) The bank may create such other funds as may be necessary or desirable for the corporate purposes of the bank including debt service reserve funds not established pursuant to this section.

(6) Any monies appropriated by the State Legislature for the purposes of any of the debt service reserve funds established pursuant to this section shall not revert to the General Fund of the state at the end of any fiscal year.

HISTORY: Laws, 1989, ch. 522, § 4; Laws, 1991, ch. 578, § 4; Laws, 1997, ch. 302, § 5, eff from and after passage (approved February 24, 1997).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

§ 31-25-107. Joint legislative committee.

There is hereby created, for the purposes of oversight and review, a joint legislative committee to be comprised of six (6) members, three (3) to be appointed by the Speaker of the House from the membership of the Mississippi House of Representatives, one (1) from each Supreme Court district, as such districts existed on January 1, 1989, and three (3) to be appointed by the President of the Senate from the membership of the Mississippi Senate, one (1) from each Supreme Court district, as such districts existed on January 1, 1989. The committee shall provide oversight and review of all bond transactions authorized by this article and shall render any necessary advice in order to accomplish the purposes of this article.

HISTORY: Laws, 1989, ch. 522, § 5, eff from and after passage (approved April 4, 1989).

Cross References — Applicability of Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, see §§ 49-17-81 et seq.

CHAPTER 27.

MISSISSIPPI BOND REFINANCING ACT

Sec.
31-27-1. Short title.
31-27-3. Definitions.
31-27-5. Legislative intent; construction.
31-27-7. Issuance of refunding bonds.
31-27-9. Escrow account; banking corporation as trustee for bondholders.
31-27-11. Security for refunding bonds.
31-27-13. Amount of refunding bonds authorized to be issued.
31-27-15. Sale of refunding bonds and disposition of proceeds.
31-27-17. Refinancing of outstanding bonds by issuance of refunding bonds.
31-27-19. Negotiability of refunding bonds.
31-27-21. Tax treatment.
31-27-23. Judicial validation and related procedures.
31-27-25. Savings clause.

§ 31-27-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Bond Refinancing Act."

HISTORY: Laws, 1987, ch. 429, § 1, eff from and after passage (approved March 30, 1987).

Cross References — Application of this chapter to the Mississippi Development Bank Act, see § 31-25-27.

Application of this chapter to Mississippi Home Corporation Act, see § 43-33-733.

§ 31-27-3. Definitions.

The following terms whenever used or referred to in this chapter shall have the following meaning, unless a different meaning appears from the context:

(a) "Bond" or "bonds" means every duly authorized, executed and delivered instrument evidencing an obligation incurred by a governmental unit for the payment or repayment of money, which obligation matures more than one (1) year from the date of said instrument. The terms "bond" or "bonds" shall also include refunding bonds.

(b) "Governing body" means the duly elected or appointed legislative body of a political subdivision or such other body which is charged by law with governing the political subdivision. As to the state, the term "governing body" means the State Bond Commission.

(c) "Holder of bonds" or "bondholder" or any similar term means any person who shall be the bearer of any bond or bonds registered to bearer or not registered, or the registered owner of any such bond or bonds which shall at the time be registered other than to bearer.

(d) "Law" means any act or statute, general, special or local, of this state;

(e) "Governmental unit" means the State of Mississippi, any county, municipality, school district, special services district, or any other district, commission, board, corporation, agency, levee district, drainage district, department, authority or political subdivision of this state;

(f) "Refunding bonds" means bonds issued under this chapter;

(g) "Resolution" means a resolution, ordinance, act, record of minutes, or other appropriate enactment of a governing body; and

(h) "State" means the State of Mississippi.

HISTORY: Laws, 1987, ch. 429, § 2, eff from and after passage (approved March 30, 1987).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 31-27-5. Legislative intent; construction.

The purpose of this chapter is to provide full and complete authority to governmental units for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, limitations, approvals, orders, acts or things by any governing body of any governmental unit, other than those required by this chapter, shall be required to issue any refunding bonds or to do any act or perform anything under this law except as may be prescribed herein. The powers conferred by this chapter shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this chapter shall not affect, the powers conferred by any other law. The principal amount of any bond for which refunding bonds have been issued under this chapter and for which governmental obligations described in Section 31-27-15 have been placed in escrow in an amount sufficient to pay the principal of and interest on such bonds and any redemption premium on such bonds as set forth in Section 31-27-15 shall not be considered outstanding bonded indebtedness for the purpose of determining the debt limitation of the governmental unit. This chapter is remedial in nature and shall be liberally construed.

HISTORY: Laws, 1987, ch. 429, § 3; Laws, 1988, ch. 304, § 1, eff from and after passage (approved March 3, 1988).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 31-27-7. Issuance of refunding bonds.

Refunding bonds shall be issued pursuant to an authorizing resolution of the governing body of a governmental unit. Refunding bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times (either serially or term or a combination thereof), may bear interest at such rate or rates not to exceed that allowed by law for the class of bonds being used to effect the refunding, may be in such denominations, may be in such form (either coupon or registrable as to principal or fully registered or a combination), may carry such registration and conversion privileges, may have such sinking fund provisions, may be executed in such manner, may be payable in such medium of payment and at such place (either within or without the state) at such time or times, may be subject to such terms of redemption (with or without premium), may be declared or become due prior to the maturity date thereof, may be sold at public or private sale (which sale shall be on such terms and in such manner as the governing body shall determine), may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants (including, without limitation, covenants for the security and better marketability of such refunding bonds), as may be provided by resolution of the governing body of the governmental unit.

HISTORY: Laws, 1987, ch. 429, § 4, eff from and after passage (approved March 30, 1987).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 222 et seq.

CJS.
64A C.J.S., Municipal Corporations § 1702.
81A C.J.S., States §§ 437, 443-445 et seq.

§ 31-27-9. Escrow account; banking corporation as trustee for bondholders.

The governing body of any governmental unit may, in addition to the other powers conferred, include provisions in any resolution authorizing the issuance of refunding bonds, which shall be a part of the contract with the holders of the refunding bonds, as to:

(a) The establishment of an escrow account in accordance with the provisions of Section 31-27-15;

(b) The appointment of a banking corporation or association within or without the state which is a member of the Federal Deposit Insurance Corporation, or any successor thereto, to act as trustee for the bondholders, and the authorization, execution and delivery of an agreement evidencing the contractual relationships among the governmental unit, the trustee and bondholders, which agreement may contain such terms, conditions and covenants as the governing body shall determine;

(c) The appointment of a banking corporation or association within or without the state which is a member of the Federal Deposit Insurance Corporation, or any successor thereto, to hold in escrow any escrow account consistent with the provisions of Section 31-27-15, and the authorization, execution and delivery of an agreement relating to such escrow account evidencing the contractual relationships among the governmental unit, such banking corporation or association and related parties, which agreement may contain such terms, conditions and covenants as the governing body shall determine; and

(d) The execution of all instruments necessary or convenient in the exercise of the powers granted by this chapter or in the performance of the duties of the governmental unit and the officers, agents and employees thereof.

HISTORY: Laws, 1987, ch. 429, § 5, eff from and after passage (approved March 30, 1987).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 31-27-11. Security for refunding bonds.

Refunding bonds may be secured by a pledge of: (a) the same source of security as the bonds to be refunded, or (b) such other security as the governing body of the governmental unit may lawfully pledge, or both; all as may be provided by resolution of the governing body of the governmental unit.

HISTORY: Laws, 1987, ch. 429, § 6, eff from and after passage (approved March 30, 1987).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 31-27-13. Amount of refunding bonds authorized to be issued.

The total amount of refunding bonds to be issued under this chapter shall be an amount sufficient to effect the refunding and may include an amount sufficient to pay (a) the principal amount of the refunded bonds, (b) interest accrued or to accrue to the date of maturity or the date of redemption of the bonds to be refunded (which need not necessarily be on the first available redemption date), (c) any redemption premiums to be paid thereon, (d) any reasonable expenses incurred in connection with such refunding, and (e) any other reasonable costs deemed appropriate by the governing body of the governmental unit, including, without limitation, the expenses of preparing and delivering the refunding bonds, legal fees, financial advisor fees, consultant fees, and other expenses incurred in connection with the issuance, sale and delivery of the refunding bonds.

Refunding bonds issued under this chapter shall result in an overall net present value savings to maturity of not less than two percent (2%) of the bonds being refunded.

HISTORY: Laws, 1987, ch. 429, § 7, eff from and after passage (approved March 30, 1987).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

RESEARCH REFERENCES

Am. Jur.	CJS.
64 Am. Jur. 2d, Public Securities and Obligations § 299.	64A C.J.S., Municipal Corporations §§ 1654-1657.

§ 31-27-15. Sale of refunding bonds and disposition of proceeds.

Refunding bonds may be sold and proceeds thereof may be applied to the payment of the bonds refunded or, as to such bonds as are not yet maturing, such proceeds may be deposited in escrow to be held until such time as the bonds to be refunded become available for payment by maturity, call for redemption in whole or in part (which need not necessarily be on the first available redemption date) or otherwise and during such period of escrow may be invested, without regard to the limitations imposed by any other law, in direct obligations of the United States of America or any of its agencies or in obligations fully guaranteed or insured by the United States of America which bear interest at such rates as to provide funds which, together with any uninvested money placed in such escrow, will be sufficient to pay when due or called for redemption the bonds so refunded, together with interest accrued and to accrue thereon and redemption premiums, if any, and the expenses relating to such escrow, and such refunding bond proceeds or obligations so purchased therewith, together with other funds legally available therefor, may be deposited in escrow with a banking corporation or association which is a member of the Federal Deposit Insurance Corporation, or any successor thereto. Such refunding bonds may also be sold and the proceeds thereof may also be applied to the payment of the bonds refunded in accordance with any method of refunding deemed by the governing body of a governmental unit to be advantageous to the governmental unit, and any escrow established in connection therewith shall be in accordance with the terms and conditions of any related escrow agreement approved and entered into by the governing body of a governmental unit.

HISTORY: Laws, 1987, ch. 429, § 8, eff from and after passage (approved March 30, 1987).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Legislative intent regarding the Mississippi Bond Refinancing Act, see § 31-27-5.

Authorization for escrow account and its holding by banking corporation appointed to act as trustee for bondholders, see § 31-27-9.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 229-231.

CJS.
64A C.J.S., Municipal Corporations §§ 1679-1683.
81A C.J.S., States §§ 451-453.

§ 31-27-17. Refinancing of outstanding bonds by issuance of refunding bonds.

The governing body of a governmental unit may refinance outstanding bonds through the issuance of refunding bonds and the exchange of such refunding bonds for the bonds to be refunded. Any such refunding may be effected whether or not the bonds to be refunded shall have then matured or shall thereafter mature.

HISTORY: Laws, 1987, ch. 429, § 9, eff from and after passage (approved March 30, 1987).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 221-225.

CJS.
81A C.J.S., States §§ 454-455.

§ 31-27-19. Negotiability of refunding bonds.

All refunding bonds issued under this chapter shall be fully negotiable in accordance with their terms and shall be "securities" within the meaning of Article 8 of the Uniform Commercial Code, subject to the provisions of such bonds pertaining to registration. It shall not be necessary to file financing statements or continuation statements to protect the lien and pledge granted by a governmental unit to the holders of any refunding bonds issued under this chapter.

HISTORY: Laws, 1987, ch. 429, § 10, eff from and after passage (approved March 30, 1987).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Article 8 of the Uniform Commercial Code, see §§ 75-8-101 et seq.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 229-231.

CJS.
64A C.J.S., Municipal Corporations §§ 1702-1704.
81A C.J.S., States §§ 445-447.

§ 31-27-21. Tax treatment.

All refunding bonds issued under this chapter, and all interest thereon and income therefrom, shall be exempt from taxation to the same extent that the refunded bonds are exempt from taxation.

HISTORY: Laws, 1987, ch. 429, § 11, eff from and after passage (approved March 30, 1987).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

RESEARCH REFERENCES

Am. Jur.
71 Am. Jur. 2d, State and Local Taxation §§ 432, 433.

§ 31-27-23. Judicial validation and related procedures.

The refunding bonds authorized under authority of this chapter may, in the discretion of the governing body of the governmental unit, be validated in the chancery court of the county in which the governing body resides in the manner and with the force and effect provided now or hereafter by Chapter 13, Title 31, Mississippi Code of 1972, for the validation of municipal bonds. If the governing body is the State Bond Commission, the residence of the commission shall be Hinds County for the purposes of this section. The necessary papers shall be transmitted to the state's bond attorney by the governing body, and the required notice shall be published in a newspaper having general circulation in the State of Mississippi or the county in which the refunding bonds are to be validated.

HISTORY: Laws, 1987, ch. 429, § 12, eff from and after passage (approved March 30, 1987).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 384 et seq.

CJS.
64A C.J.S., Municipal Corporations §§ 1662, 1663.

§ 31-27-25. Savings clause.

If any one or more sections, clauses, sentences or parts of this chapter shall for any reason be questioned in any court and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this chapter, but shall be confined in its operations to the specific provisions so held invalid, and inapplicability or invalidity of any such section, clause, provision or part shall not be taken to affect or prejudice in any way the remaining part or parts of this chapter.

HISTORY: Laws, 1987, ch. 429, § 13, eff from and after passage (approved March 30, 1987).

CHAPTER 29.

INSTITUTE FOR TECHNOLOGY DEVELOPMENT

Sec.

31-29-1. Definitions.
31-29-3. Authorization to issue bonds to defray unappropriated expenses of Institute for Technology Development; limitations as to amount.
31-29-5. Issuance of bonds; repayment; ad valorem tax on property.
31-29-7. Bonds to be negotiable instruments; bonds and income tax exempt.
31-29-9. Sale of bonds; price; notice of sale.
31-29-11. Institute for Technology Development Fund; proceeds of bonds to be used solely for support of institute.
31-29-13. Right of holders of bonds or interest coupons.
31-29-15. Necessity of other proceedings or conditions for issuance of bonds; validation of bonds.
31-29-17. Bonds as legal investments and securities.
31-29-19. Authority for exercise of powers.
31-29-21. Withdrawal of funds from Institute for Technology Development Fund.
31-29-23. Representation by Attorney General in issuing, selling and validating bonds; costs and expenses of issuance of bonds.
31-29-25. Audit of Institute for Technology Development.
31-29-27. Repealed.
31-29-29. Institute for Technology Development (ITD) to establish and administer grants program for inventors and small businesses; maximum grants and purposes therefor; ITD royalties.

§ 31-29-1. Definitions.

As used in this chapter, "general obligation bonds" means bonds of the State of Mississippi, to the repayment of which, both as to principal and interest, the full faith, credit and taxing power of the State of Mississippi are irrevocably pledged until the principal and interest is paid in full.

HISTORY: Laws, 1987, ch. 437, § 1, eff from and after passage (approved March 30, 1987).

Editor's Notes — The preamble to Chapter 437, Laws of 1987, provides as follows:

"WHEREAS, technology is vital to the economic growth of any nation, state or community; and

"WHEREAS, Mississippi has never had a strong technology base; and

"WHEREAS, the Institute for Technology Development has been created to help close the gap in research and development which exists between Mississippi and other states; and

"WHEREAS, the Institute for Technology Development is helping to accelerate technology-based economic development in Mississippi; and

"WHEREAS, the welfare of the citizens of this state requires, and it is in the public interest and a public policy of this state to support, the expansion of research and development activity within Mississippi: NOW, THEREFORE,

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:"

§ 31-29-3. Authorization to issue bonds to defray unappropriated expenses of Institute for Technology Development; limitations as to amount.

The State Bond Commission shall have the power and is hereby authorized, at one time or from time to time prior to June 30, 1994, to issue negotiable general obligation bonds of the State of Mississippi to pay all or any part of the cost of defraying the state's share of supporting the Institute for Technology Development for any fiscal year in which the institute does not receive the requisite amount pursuant to legislative appropriation. The total amount of bonds which may be issued pursuant to this chapter shall not exceed Six Million Dollars ($6,000,000.00).

HISTORY: Laws, 1987, ch. 437, § 2; Laws, 1990, ch. 503, § 1; Laws, 1994, ch 541, § 1, eff from and after July 1, 1994.

§ 31-29-5. Issuance of bonds; repayment; ad valorem tax on property.

Upon the adoption of a resolution by the Board of Directors of the Institute for Technology Development declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by this chapter, the board shall deliver a certified copy of its resolution to the State Board of Economic Development, the Chairmen of the Appropriations Committees of the Senate and the House of Representatives, the Chairman of the Finance Committee of the Senate and the Chairman of the Ways and Means Committee of the House of Representatives. Upon receipt of the resolution, the Board of Economic Development may approve such bond issuance by resolution and certify such resolution to the State Bond Commission. Upon the receipt of same, the State Bond Commission shall issue and sell bonds in an amount requested, and do any and all things necessary and advisable in connection with the issuance and sale of such bonds. For the payment of such bonds and the interest thereon, the full faith, credit and taxing power of the State of Mississippi are hereby irrevocably pledged. If the Legislature shall find that there are funds available in the General Fund of the Treasury of the State of Mississippi in amounts sufficient to pay maturity, principal and accruing interest of such general obligation bonds and if the Legislature shall appropriate such available funds for the purpose of paying such maturity, principal and accruing interest, then the principal, maturity and accruing interest of such bonds shall be paid from appropriations made from the General Fund of the Treasury of the State of Mississippi by the Legislature thereof; but if there are not available sufficient funds in the General Fund of the Treasury of the State of Mississippi to pay the maturity, principal and accruing interest of such bonds, or if such funds are available and the Legislature should fail to appropriate a sufficient amount thereof to pay such principal and accruing interest as the same becomes due, then, and in that event, there shall annually be levied upon all taxable property within the State of Mississippi an ad valorem tax at a rate sufficient to provide the funds required to pay the bonds at maturity and the interest thereon as the same accrues. Such bonds shall bear such date or dates, be in such denomination or denominations, bear interest at such rate or rates (not to exceed that rate established in Section 75-17-101, Mississippi Code of 1972), be payable at such place or places within or without the State of Mississippi, shall mature absolutely at such time or times, be redeemable prior to maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as shall be determined by resolution of the State Bond Commission. Such bonds shall be signed by the Chairman of the State Bond Commission or by his facsimile signature, and the official seal of the State Bond Commission shall be affixed thereto, attested by the Secretary of the State Bond Commission. The interest coupons to be attached to such bonds may be executed by the facsimile signatures of such officers. Whenever any such bonds shall have been signed by the officials herein designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

HISTORY: Laws, 1987, ch. 437, § 3, eff from and after passage (approved March 30, 1987).

Editor's Notes — Section 57-1-2 provides that the term "Board of Economic Development" shall mean the Mississippi Development Authority.

§ 31-29-7. Bonds to be negotiable instruments; bonds and income tax exempt.

All general obligation bonds of the State of Mississippi and interest coupons issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the State of Mississippi. Such bonds and the income therefrom shall be exempt from all taxation within the State of Mississippi.

HISTORY: Laws, 1987, ch. 437, § 4, eff from and after passage (approved March 30, 1987).

§ 31-29-9. Sale of bonds; price; notice of sale.

The State Bond Commission shall sell such bonds in the manner and at a price which will result in the lowest interest rate on the best terms obtainable for the state, but no such sale shall be made at a price less than par plus accrued interest to date of delivery of the bonds to the purchaser. Notice of the sale of any such bonds shall be published at least one time not less than ten (10) days prior to the date of sale and shall be so published in one or more newspapers having a general circulation in the City of Jackson and in one or more other newspapers or financial journals as may be directed by the State Bond Commission.

HISTORY: Laws, 1987, ch. 437, § 5, eff from and after passage (approved March 30, 1987).

§ 31-29-11. Institute for Technology Development Fund; proceeds of bonds to be used solely for support of institute.

Upon the issuance and sale of such bonds, the State Bond Commission shall transfer the proceeds of any such sale or sales to a special fund in the State Treasury to be known as the "Institute for Technology Development Fund." The proceeds of such bonds shall be used solely for the payment of the cost of the state's share of supporting the Institute for Technology Development, which shall include costs incident to the issuance and sale of such bonds, and shall be disbursed solely upon the order of the State Treasurer under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds.

HISTORY: Laws, 1987, ch. 437, § 6, eff from and after passage (approved March 30, 1987).

Cross References — Withdrawal of funds from Institute for Technology Development Fund, see § 31-29-21.

§ 31-29-13. Right of holders of bonds or interest coupons.

Any holder of bonds issued under the provisions of this chapter or of any of the interest coupons pertaining thereto may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights granted hereunder, or under such resolution, and may enforce and compel performance of all duties required by this chapter to be performed, in order to provide for the payment of bonds and interest thereon.

HISTORY: Laws, 1987, ch. 437, § 7, eff from and after passage (approved March 30, 1987).

§ 31-29-15. Necessity of other proceedings or conditions for issuance of bonds; validation of bonds.

Such general obligation bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified or required by this chapter. Any resolution providing for the issuance of general obligation bonds under the provisions of this chapter shall become effective immediately upon its adoption by the State Bond Commission, and any such resolution may be adopted at any regular, special or adjourned meeting of the State Bond Commission by a majority of its members.

The bonds authorized under the authority of this chapter may, in the discretion of the State Bond Commission, be validated in the Chancery Court of Hinds County, Mississippi, in the manner and with the force and effect provided now or hereafter by Chapter 13, Title 31, Mississippi Code of 1972, for the validation of county, municipal, school district and other bonds. The necessary papers for such validation proceedings shall be transmitted to the State Bond Commission, and the required notice shall be published in a newspaper published in the City of Jackson, Mississippi.

HISTORY: Laws, 1987, ch. 437, § 8, eff from and after passage (approved March 30, 1987).

§ 31-29-17. Bonds as legal investments and securities.

All bonds issued under the provisions of this chapter shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi, and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

HISTORY: Laws, 1987, ch. 437, § 9, eff from and after passage (approved March 30, 1987).

§ 31-29-19. Authority for exercise of powers.

This chapter shall be deemed to be full and complete authority for the exercise of the powers herein granted.

HISTORY: Laws, 1987, ch. 437, § 10, eff from and after passage (approved March 30, 1987).

§ 31-29-21. Withdrawal of funds from Institute for Technology Development Fund.

The funds which are transferred from the sale of bonds under this chapter to the special fund in the State Treasury known as the "Institute for Technology Development Fund" may be withdrawn only in the following manner: Such funds shall be paid by the State Treasurer upon warrants issued by the State Fiscal Management Board, which warrants shall be issued upon requisition signed by the State Treasurer.

HISTORY: Laws, 1987, ch. 437, § 11, eff from and after passage (approved March 30, 1987).

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the Department of Finance and Administration.

§ 31-29-23. Representation by Attorney General in issuing, selling and validating bonds; costs and expenses of issuance of bonds.

Except as otherwise authorized in Section 7-5-39, the Attorney General of the State of Mississippi shall represent the State Bond Commission in issuing, selling and validating bonds herein provided for, and the bond commission is hereby authorized and empowered to expend from the proceeds derived from the sale of the bonds authorized hereunder all necessary administrative, legal and other expenses incidental and related to the issuance of bonds authorized under this chapter.

HISTORY: Laws, 1987, ch. 437, § 12; Laws, 2012, ch. 546, § 14, eff from and after July 1, 2012.

§ 31-29-25. Audit of Institute for Technology Development.

(1) Audits of the Institute for Technology Development (ITD) are to be performed by the State Auditor in accordance with the provisions of this section. Such audits shall be conducted by the State Auditor in a manner that will result in the review of the ITD's use of funds from the perspective of ITD's fiscal year, not the state's fiscal year. In conducting these audits, the State Auditor may rely to the maximum extent possible upon audits of ITD conducted by independent auditors in accordance with the provisions of the "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" published by the Comptroller General of the United States and Circular A-133 "Audits of Institutions of Higher Learning and Other Non-Profit Institutions" published by the Office of Management and Budget. ITD shall present the results of any and all such audits to the State Auditor for review and incorporation into his reports to the Legislative Budget Committee.

(2) For any state fiscal year during which the Institute for Technology Development receives funds from the State of Mississippi, the State Department of Audit shall conduct a financial and legal compliance audit with respect to the use of such funds by the institute. The department shall incorporate in its audit report any recommendations it has concerning the financial and management control practices of the institute. The department shall report its findings and recommendations to the Legislative Budget Committee which shall make them available to members of the Legislature.

HISTORY: Laws, 1990, ch. 386, § 1; Laws, 1994, ch 541, § 2, eff from and after July 1, 1994.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 31-29-27. Repealed.

Repealed by Laws of 2017, ch. 402, § 3, effective from and after July 1, 2017.

§ 31-29-27. [Laws, 1990, ch. 503, § 2, eff from and after passage (approved March 31, 1990).]

Editor's Notes — Former § 31-29-27 established the Institute for Technology Development Oversight Committee.

§ 31-29-29. Institute for Technology Development (ITD) to establish and administer grants program for inventors and small businesses; maximum grants and purposes therefor; ITD royalties.

(1) The Institute for Technology Development (ITD) is authorized to establish and administer four (4) programs to provide assistance grants to developers of inventions or innovative ideas, using funds appropriated by the Legislature for that purpose and other funds available to ITD for that purpose. The four (4) programs shall provide moneys to inventors, innovators and small businesses to defray part of the costs of:

(a) Having evaluations of inventions or innovative ideas prepared;

(b) Developing new inventions or innovative ideas;

(c) Preparing applications for federal Small Business Innovative Research (SBIR) grants; and

(d) Supporting small businesses during the gap period between Phase I and Phase II SBIR grants.

(2) The first program shall provide grants to help inventors and innovators defray up to fifty percent (50%) of the cost of having an evaluation prepared of the technical and economic merits of the invention or innovative idea. The maximum amount of a grant for any one (1) invention or innovative idea shall be Twenty Thousand Dollars ($20,000.00). ITD itself may perform any evaluation that it is qualified to perform, and may charge a fee to the inventor or innovator for the evaluation. As a condition of providing a grant for an invention or innovative idea under this program, ITD may require the inventor or innovator to agree to pay a royalty to ITD of a percentage of any proceeds earned from the invention or innovative idea if it should become successful. The revenues generated for ITD from any fees for performing evaluations and from any such royalties shall be used to provide additional grants under this program.

(3) The second program shall provide grants to help inventors and innovators defray up to twenty percent (20%) of the cost of developing a new invention or innovative idea. The maximum amount of a grant for any one (1) invention or innovative idea shall be Fifty Thousand Dollars ($50,000.00) for the first two (2) years of the program, and thereafter shall be such higher limit as determined by ITD. ITD may charge a fee to inventors and innovators who receive financial support for an invention or innovative idea with the use of a

grant from the program. As a condition of providing a grant for an invention or innovative idea under this program, ITD may require the inventor or innovator to agree to pay to ITD a royalty of a percentage of any proceeds earned from the invention or innovative idea if it should become successful. The revenues generated for ITD from any such fees and royalties shall be used to provide additional grants under this program.

(4) The third program shall provide grants to help small businesses defray up to fifty percent (50%) of the cost of preparing applications for federal Small Business Innovative Research (SBIR) grants, which assist small businesses in commercializing new inventions and innovative ideas. The maximum amount of a grant for any one (1) recipient shall be Two Thousand Dollars ($2,000.00).

(5) The fourth program shall provide grants to help small businesses defray up to twenty-five percent (25%) of the cost of supporting the business during the gap period between the exhaustion of Phase I SBIR grant funds and the receipt of Phase II SBIR grant funds. The maximum amount of a grant for any one (1) small business shall be Twenty-five Thousand Dollars ($25,000.00). As a condition of providing a grant to a small business under this program, ITD may require the small business to agree to pay to ITD a royalty of a percentage of any proceeds earned from the invention or innovative idea of the business if it should become successful. The revenues generated for ITD from any such royalties shall be used to provide additional grants under this program.

HISTORY: Laws, 1994, ch. 415, § 1, eff from and after July 1, 1994.

CHAPTER 31.

MISSISSIPPI TELECOMMUNICATIONS CONFERENCE AND TRAINING CENTER

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§ 31-31-1. Short title.

This chapter may cited as the Mississippi Telecommunication Conference and Training Center Act.

HISTORY: Laws, 1995, ch. 628, § 1, eff from and after July 1, 1995 (became law without the Governor's signature).

§ 31-31-3. Definitions.

As used in this chapter:

(a) "Commission" means the Mississippi Telecommunication Conference and Training Center Commission.

(b) "Facility" means the Mississippi Telecommunication Conference and Training Center located in the City of Jackson, Mississippi.

(c) "Hotel" or "motel" means and includes a place of lodging that at any one time will accommodate transient guests on a daily or weekly basis and that is known to the trade as such. Such terms shall not include a place of lodging with ten (10) or less rental units.

HISTORY: Laws, 1995, ch. 628, § 2; Laws, 2008, ch. 542, § 3, eff from and after passage (approved May 9, 2008).

§ 31-31-5. Creation of Mississippi Telecommunications Conference and Training Center Commission; composition; appointment, terms and compensation of members; officers; quorum; director; abolition; transfer of records, personal property, funds and other assets.

(1) There is hereby created a commission to be known as the "Mississippi Telecommunication Conference and Training Center Commission" which shall consist of eleven (11) members as follows:

(a) The Executive Director of the Department of Economic and Community Development;

(b) The Mayor of the City of Jackson;

(c) The President of Jackson State University;

(d) The Vice-Chancellor for Health Affairs of the University of Mississippi Medical Center;

(e) The Executive Director of the Metro Jackson Convention and Visitors Bureau;

(f) The Executive Director of the Institute for Technology Development;

(g) Three (3) members of the private sector appointed by the Governor, with the advice and consent of the Senate, to serve a term concurrent with that of the Governor; and

(h) Two (2) members of the private sector appointed by the Lieutenant Governor, with the advice and consent of the Senate, to serve a term concurrent with that of the Lieutenant Governor.

(2) The members of the commission shall serve without compensation except that members shall be paid their actual and necessary expenses in connection with the performance of their duties as members of the commission including mileage, as authorized in Section 25-3-41 and each member who is not a state employee or a public official shall be paid a per diem as authorized in Section 25-3-69. Expenses, mileage and per diem allowance shall be paid out of the Mississippi Telecommunication Conference and Training Center Fund.

(3) The commission shall elect from its membership a chairman, who shall preside over meetings, and a vice chairman, who shall preside in the absence of the chairman. Four (4) members of the commission shall constitute a quorum for the transaction of any and all business of the commission.

(4) The commission shall appoint a director who shall be responsible for conducting the day-to-day business of the commission.

(5) From and after the date agreed upon by the Department of Finance and Administration and the Capital City Convention Center Commission:

(a) The Mississippi Telecommunication Conference and Training Center Commission shall be abolished;

(b) All records, personal property, funds and other assets and personnel of the commission shall be transferred to the Capital City Convention Center Commission, created by Chapter 1019, Local and Private Laws of 2004; however, the provisions of this paragraph (b) shall not apply to any monies deposited in the Mississippi Telecommunication Conference and Training Facility Reserve Fund pursuant to Section 31-31-11; and

(c) Any personal service, management or other contracts of like nature entered into by the commission shall be canceled.

HISTORY: Laws, 1995, ch. 628, § 3; Laws, 2008, ch. 542, § 2, eff from and after passage (approved May 9, 2008).

OPINIONS OF THE ATTORNEY GENERAL

Subject to a review of the actual proposed documents for a transaction when ready for execution, a stated structure and flow of funds in connection with the renovation of a building and of a portion of an existing parking facility, demolition of the remainder of the existing parking facility, and construction of a new structure thereon would be valid. Pittman, April 2, 1999, A.G. Op. #99-0158.

Private funds may be used to pay costs incurred under negotiated contracts to improve publicly owned property. Pittman, April 2, 1999, A.G. Op. #99-0158.

§ 31-31-7. General powers and duties of commission [For contingent repeal of this section, see Editor's note].

The commission shall have the following powers:

(a) To sue and be sued in its own name;

(b) To maintain offices at such places as it may designate;

(c) To establish, construct, enlarge, improve, maintain, equip, operate and regulate the facility and other property incidental thereto, including any additional property or facilities considered by the commission to promote the business, usage or economic viability of the facility;

(d) To grant to others the privilege to operate for profit concessions, leases and franchises, including but not limited to, the furnishing of food and banquet services, management services, and other services necessary to the operation of the facility and such concessions, leases and franchises shall be exclusive or limited;

(e) To determine fees, rates and charges for the use of its facilities;

(f) To apply for and accept gifts, or grants of money or gifts, grants or loans of other property or other financial assistance from any source;

(g) To borrow funds needed to carry out the purposes of this chapter; provided, however, that such debt may be secured only by the revenues generated by the facility, funds generated by the tax levied pursuant to

Section 31-31-11 and the proceeds of any bonds issued pursuant to this chapter;

(h) To appoint, employ or engage such officers, employees, architects, engineers, attorneys, accountants, financial advisors, investment bankers and other advisors, consultants, and agents as may be necessary or appropriate;

(i) To make, assume and enter into all contracts, leases and arrangements necessary or incidental to the exercise for its powers, including contracts for management, operation or marketing of all or any part of its facilities;

(j) To adopt, amend and repeal rules and regulations for the use, maintenance and operation of its facilities and governing the conduct of persons and organizations using its facilities and to enforce such rules and regulations; and

(k) To do all things necessary or convenient to the purposes of this chapter.

HISTORY: Laws, 1995, ch. 628, § 4, eff from and after July 1, 1995 (became law without the Governor's signature).

Editor's Notes — Law, 2008, ch. 542, § 4 provides:
"SECTION 4. Sections 31-31-7, 31-31-9 and 31-31-13, Mississippi Code of 1972, which provide for the general powers and duties of the Mississippi Telecommunications Conference and Training Center Commission, create the Mississippi Telecommunications Conference and Training Center Fund, and authorize a portion of the contracts and anticipated expenditures for the planning and construction of the facility to be set aside for socially and economically disadvantaged individuals, are repealed from and after the date agreed upon by the Department of Finance and Administration and the Capital City Convention Center pursuant to subsection (5) of Section 31-31-5, Mississippi Code of 1972."

OPINIONS OF THE ATTORNEY GENERAL

Subject to a review of the actual proposed documents for a transaction when ready for execution, a stated structure and flow of funds in connection with the renovation of a building and of a portion of an existing parking facility, demolition of the remainder of the existing parking facility, and construction of a new structure thereon would be valid. Pittman, April 2, 1999, A.G. Op. #99-0158.

The Mississippi Telecommunications Conference and Training Center Commission may hire a construction manager on negotiated terms. Pittman, April 2, 1999, A.G. Op. #99-0158.

The Department of Finance and Administration (DFA), in its resolution declaring the necessity for the issuance of bonds as authorized by § 31-31-15, may establish the limits of its involvement in the construction of the Mississippi Telecommunication Conference and Training Facility; it may in such resolution advise the Mississippi Telecommunication Conference and Training Facility Commission (i) if the Telecommunications Conference and Training Center were a customary state construction project, DFA would contract for construction of the entire project under a single contract entered into in accordance with public bid laws, and (ii) contracting in the manner set forth is also permitted under applicable law; and it may in such resolution direct that the commission should choose the method of contracting for the project which it determines to be in the public interest. Pittman, April 2, 1999, A.G. Op. #99-0158.

§ 31-31-9. Mississippi Telecommunications Conference and Training Center Fund [For contingent repeal of this section, see Editor's note].

All monies and revenues collected by the commission from fees, rates and charges for the use of its facilities shall be paid by the commission to the State Treasurer, to be deposited to the credit of a special fund to be known as the Mississippi Telecommunication Conference and Training Center Fund. Money in the fund at the end of a fiscal year shall not lapse into the General Fund and interest earned on any amounts deposited into the fund shall be credited to the special fund. Except as otherwise provided in Section 31-31-11, all expenses incident to the operation and upkeep of the facility shall be paid out of the fund.

HISTORY: Laws, 1995, ch. 628, § 5, eff from and after July 1, 1995 (became law without the Governor's signature).

Editor's Notes — Laws, 2008, ch. 542, § 4 provides:
"SECTION 4. Sections 31-31-7, 31-31-9 and 31-31-13, Mississippi Code of 1972, which provide for the general powers and duties of the Mississippi Telecommunications Conference and Training Center Commission, create the Mississippi Telecommunications Conference and Training Center Fund, and authorize a portion of the contracts and anticipated expenditures for the planning and construction of the facility to be set aside for socially and economically disadvantaged individuals, are repealed from and after the date agreed upon by the Department of Finance and Administration and the Capital City Convention Center pursuant to subsection (5) of Section 31-31-5, Mississippi Code of 1972."

§ 31-31-11. Levy, assessment, and collection of occupancy tax in City of Jackson; disposition of proceeds of tax; Mississippi Telecommunication Conference and Training Facility Reserve Fund.

(1) For the purpose of providing funds for the payment of a certain portion of the debt service on any bonds issued pursuant to this chapter and for the purpose of providing funds for the maintenance of the facility and renovations, improvements and additions to the facility, there is hereby levied, assessed and shall be collected from every person engaging in or doing business in the City of Jackson, Mississippi, as specified herein, a tax which may be cited as an "occupancy tax," which shall be in addition to all other taxes now imposed. Such tax shall be upon each hotel and motel located within the City of Jackson in the amount of Seventy-five Cents (75¢) per day for each occupied room.

(2) Persons liable for the tax imposed herein shall add the amount of tax to the price of rooms, and in addition thereto shall collect, insofar as practicable, the amount of the tax due by him from the person receiving the services or goods at the time of payment therefor.

(3) Such tax shall be collected by and paid to the State Tax Commission on a form prescribed by the State Tax Commission, in the same manner that state sales taxes are collected and paid; and the full enforcement provisions and all

other provisions of Chapter 65, Title 27, Mississippi Code of 1972, shall apply as necessary to the implementation and administration of this chapter.

(4) The proceeds of such tax shall be deposited by the State Tax Commission into the reserve fund created pursuant to subsection (5) of this section on or before the fifteenth day of the month following the month in which collected by the State Tax Commission.

(5) There is hereby created in the State Treasury a special fund to be called the "Mississippi Telecommunication Conference and Training Facility Reserve Fund." Money in the fund at the end of a fiscal year shall not lapse into the general fund and interest earned on any amount deposited into the fund shall be credited to the special fund. Money in the fund shall be used to pay a portion of the debt service of the bonds issued pursuant to this chapter as specified in subsection (6) of this section and to provide funds for the maintenance and operation of the facility, including, but not limited to, the director and all other personnel for operational purposes. Provided, however, that not more than Twenty-five Thousand Dollars ($25,000.00) shall be available from the special fund to defray the costs of operation of the facility from and after April 19, 2005 through June 30, 2005.

(6) The amount of the debt service that shall be paid annually from the reserve fund shall be the amount of the debt service on bonds attributable to forty percent (40%) of the cost of constructing the facility and the amount of the debt service on bonds attributable to all land acquisition costs. Amounts remaining in the fund in any fiscal year after the payments required by this subsection for debt service, may be used by the commission to provide funds for the maintenance of the facility and renovations, improvements and additions to the facility.

(7) Before the taxes authorized by this chapter shall be imposed, the municipal governing authorities of the City of Jackson shall adopt a resolution declaring its intention to levy the tax, setting forth the amount of such tax and establishing the date on which this tax initially shall be levied and collected. This date shall be not less than the first day of the second month from the date of adoption of the resolution.

The resolution shall be published in a local newspaper at least twice during the period from the adoption of the resolution to the effective date of the taxation prescribed in this section, with the last publication being made no later than ten (10) days prior to the effective date of such taxation.

(8) The tax imposed pursuant to this section shall remain in force and effect until the City of Jackson shall by resolution rescind the tax; provided, however, that the tax imposed pursuant to this section shall not be rescinded if any bonds issued pursuant to this chapter remain outstanding.

HISTORY: Laws, 1995, ch. 628, § 6; Laws, 2005, ch. 494, § 1, eff from and after passage (approved Apr. 19, 2005).

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Tax as security for payment of debt of commission, see 31-31-7.

Mississippi Telecommunications Conference and Training Center Fund, see § 31-31-9.

Resolution stating tax levied, see 31-31-15.

OPINIONS OF THE ATTORNEY GENERAL

Proceeds remaining in the Mississippi Telecommunication Conference and Training Facility Reserve Fund after debt service payments have been made may only be used for facility maintenance, renovations, improvements and additions and may not be applied toward the operation and upkeep expenses of the facility. Heidel, May 23, 1997, A.G. Op. #97-0263.

The statute does not permit the use of $2,000,000 of Room Tax Avails that had been collected and was available for the purpose of demolition of a parking garage or to prepay the cost of a nonexclusive use of meeting space in a hotel. Pittman, Nov. 15, 1999, A.G. Op. #99-0565.

§ 31-31-13. Set aside of portion of contracts and expenditures for socially and economically disadvantaged individuals [For contingent repeal of this section, see Editor's note].

(1) The commission, for the purpose of promoting fairness and equity in the awarding of state business and contracts under the provisions of this chapter, may set aside for socially and economically disadvantaged individuals not more than twenty percent (20%) of its contracts and anticipated expenditures for the planning and construction of the facility. The term "socially and economically disadvantaged individuals" shall have the meaning ascribed to such term under Section 8(d) of the Small Business Act (15 USCS, Section 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this section. Neither the Department of Finance and Administration or any other agency or department of the state shall adopt or enforce any policy, practice or procedure that conflicts with or that would have the effect of superseding the provisions of this section.

(2) If the twenty percent (20%) set aside for socially and economically disadvantaged individuals as provided in subsection (7) of this section is not met, the commission shall state in its minutes the reasons why the set-aside percentage was not met. No liability shall accrue to the state, any agency of the state, the commission, any member of the board or any officer or employee of the state or the board as a result of the twenty percent (20%) set aside for socially and economically disadvantaged individuals not being achieved.

HISTORY: Laws, 1995, ch. 628, § 7, eff from and after July 1, 1995 (became law without the Governor's signature).

Editor's Notes — Laws, 2008, ch. 542, § 4 provides:

"SECTION 4. Sections 31-31-7, 31-31-9 and 31-31-13, Mississippi Code of 1972, which provide for the general powers and duties of the Mississippi Telecommunications Conference and Training Center Commission, create the Mississippi Telecommunications Conference and Training Center Fund, and authorize a portion of the contracts and anticipated expenditures for the planning and construction of the facility to be set aside for socially and economically disadvantaged individuals, are repealed from and after the date agreed upon by the Department of Finance and Administration and the Capital City Convention Center pursuant to subsection (5) of Section 31-31-5, Mississippi Code of 1972."

§ 31-31-15. Authorization of issuance of general obligation bonds for construction, equipping and furnishing of telecommunication conference and training facility; advertisement and sale of bonds; limitation on indebtedness.

(1) Upon receipt of (a) a resolution from the Mississippi Telecommunication Conference and Training Facility Commission stating that the commission is ready to proceed with the planning and construction of a telecommunication conference and training facility to be located in the City of Jackson, Mississippi, (b) a resolution from the City of Jackson stating that the tax authorized pursuant to Section 31-31-11 has been levied, and (c) a determination by the Department of Economic and Community Development that a business plan for the operation of the facility that has been submitted to such department by the Mississippi Telecommunication Conference and Training Center Commission is feasible, the Department of Finance and Administration, at one time or from time to time, may declare by resolution the necessity for issuance of general obligation bonds of the State of Mississippi to provide funds for construction, equipping and furnishing a telecommunication conference and training facility and for the purchase of land in the City of Jackson, Mississippi, on which to construct such facility.

(2) Upon the adoption of a resolution by the Department of Finance and Administration, declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by this section, the department shall deliver a certified copy of its resolution or resolutions to the State Bond Commission. Upon receipt of such resolution, the State Bond Commission, in its discretion, may act as the issuing agent, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds.

(3) The amount of bonds issued under this chapter shall not exceed Seventeen Million Five Hundred Thousand Dollars ($17,500,000.00).

HISTORY: Laws, 1995, ch. 628, § 8, eff from and after July 1, 1995 (became law without the Governor's signature).

OPINIONS OF THE ATTORNEY GENERAL

The Department of Finance and Administration (DFA), in its resolution declaring the necessity for the issuance of bonds as authorized by this section, may establish the limits of its involvement in the construction of the Mississippi Telecommunication Conference and Training Facility; it may in such resolution advise the Mississippi Telecommunication Conference and Training Facility Commission (i) if the Telecommunications Conference and Training Center were a customary state construction project, DFA would contract for construction of the entire project under a single contract entered into in accordance with public bid laws, and (ii) contracting in the manner set forth is also permitted under applicable law; and it may in such resolution direct that the commission should choose the method of contracting for the project which it determines to be in the public interest. Pittman, April 2, 1999, A.G. Op. #99-0158.

The statute permits the use of bond proceeds to purchase land upon which a center will be constructed, to construct a conference center, to construct a necessary parking garage, to obtain architectural and/or engineering services, to hire a construction manager, to purchase furniture, fixtures and equipment for a center, to install special telecommunications wiring and equipment, and to pay costs incident to the issuance and sale of bonds; however, the statute does not permit the use of bond proceeds for food and beverage inventory and for staff prior to opening to market the facility, hire employees and prepare for opening or for the developer's obligations to attorneys and accountants relating to documentation of agreements with the commission. Pittman, Nov. 15, 1999, A.G. Op. #99-0565.

§ 31-31-17. Form, denominations, maturities, terms, etc., of bonds; payment of principal of and interest on bonds.

The principal of and interest on the bonds authorized under this chapter shall be payable in the manner provided in this section. Such bonds shall bear such date or dates, be in such denomination or denominations, bear interest at such rate or rates not exceeding the limits set forth in Section 75-17-101, be payable at such place or places within or without the State of Mississippi, shall mature absolutely at such time or times not to exceed twenty (20) years from date of issue, be redeemable before maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as determined by resolution of the State Bond Commission.

HISTORY: Laws, 1995, ch. 628, § 9, eff from and after July 1, 1995 (became law without the Governor's signature).

§ 31-31-19. Execution of bonds and coupons.

The bonds authorized under this chapter shall be signed by the Chairman of the State Bond Commission, or by his facsimile signature, and the official seal of the State Bond Commission shall be affixed thereto, attested by the Secretary of the State Bond Commission. The interest coupons, if any, to be attached to such bonds may be executed by the facsimile signatures of such officers. Whenever any such bonds shall have been signed by the officials designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers before the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until their delivery to the purchaser, or had been in office on the date such bonds may bear. However, notwithstanding anything in this chapter to the contrary, such bonds may be issued as provided in the Registered Bond Act of the State of Mississippi.

HISTORY: Laws, 1995, ch. 628, § 10, eff from and after July 1, 1995 (became law without the Governor's signature).

Cross References — Registered Bond Act, see §§ 31-21-1 et seq.

§ 31-31-21. Negotiability of bonds and interest coupons; compliance with Uniform Commercial Code.

All bonds and interest coupons issued under the provisions of this chapter have all the qualities and incidents of negotiable instruments under the provisions of the Mississippi Uniform Commercial Code, and in exercising the powers granted by this chapter, the State Bond Commission shall not be required to and need not comply with the provisions of the Mississippi Uniform Commercial Code.

HISTORY: Laws, 1995, ch. 628, § 11, eff from and after July 1, 1995 (became law without the Governor's signature).

Cross References — Negotiable instruments under the Mississippi Uniform Commercial Code, see §§ 75-3-101 et seq.

§ 31-31-23. Issuance and sale of bonds by State Bond Commission.

The State Bond Commission shall act as the issuing agent for the bonds authorized under this chapter, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, pay all fees and costs incurred in such issuance and sale, and do all other things necessary and advisable in connection with the issuance and sale of the bonds. The State Bond Commission may pay the costs that are incident to the sale, issuance and delivery of the bonds authorized under this chapter from the proceeds derived from the sale of the bonds. The State Bond Commission shall sell such bonds on sealed bids at public sale, and for such price as it may determine to be for the best interest of the State of Mississippi, but no such sale may be made at a price less than par plus accrued interest to the date of delivery of the bonds to the purchaser. All interest accruing on such bonds so issued shall be payable semiannually or annually; however, the first interest payment may be for any period of not more than one (1) year.

Notice of the sale of any such bond shall be published at least one time, not less than ten (10) days before the date of sale, and shall be so published in one or more newspapers published or having a general circulation in the City of Jackson, Mississippi, and in one or more other newspapers or financial journals with a national circulation, to be selected by the State Bond Commission.

The State Bond Commission, when issuing any bonds under the authority of this chapter, may provide that the bonds, at the option of the State of Mississippi, may be called in for payment and redemption at the call price named therein and accrued interest on such date or dates named therein.

HISTORY: Laws, 1995, ch. 628, § 12, eff from and after July 1, 1995 (became law without the Governor's signature).

§ 31-31-25. Pledge of full faith and credit of state for payment of bonds.

The bonds issued under the provisions of this chapter are general obligations of the State of Mississippi, and for the payment thereof the full faith and credit of the State of Mississippi is irrevocably pledged. If the funds appropriated by the Legislature are insufficient to pay the principal of and the interest on such bonds as they become due, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated. All such bonds shall contain recitals on their faces substantially covering the provisions of this section.

HISTORY: Laws, 1995, ch. 628, § 13, eff from and after July 1, 1995 (became law without the Governor's signature).

§ 31-31-27. Issuance of warrants for payment of bonds.

The State Treasurer is authorized to certify to the State Fiscal Officer the necessity for warrants, and the State Fiscal Officer is authorized and directed to issue such warrants, in such amounts as may be necessary to pay when due the principal of, premium, if any, and interest on, or the accredited value of, all bonds issued under this chapter; and the State Treasurer shall forward the necessary amount to the designated place or places of payment of such bonds in ample time to discharge such bonds, or the interest on the bonds, on their due dates.

HISTORY: Laws, 1995, ch. 628, § 14, eff from and after July 1, 1995 (became law without the Governor's signature).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 31-31-29. Telecommunication Conference Center Fund.

Upon the issuance and sale of bonds under this chapter, the State Bond

Commission shall deposit the proceeds of any such sale or sales in a special fund created in the State Treasury to be known as the "Telecommunication Conference Center Fund." The proceeds of such bonds shall be used solely for the purposes provided in this chapter, including the costs incident to the issuance and sale of such bonds. The costs incident to the issuance and sale of such bonds shall be disbursed by warrant upon requisition of the State Bond Commission, signed by the chairman of the commission. The remaining monies in the Telecommunication Conference Center Fund shall be expended by the Mississippi Telecommunication Conference and Training Facility Commission under the direction of the Department of Finance and Administration under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds, and such funds shall be paid by the State Treasurer upon warrants issued by the State Fiscal Officer.

HISTORY: Laws, 1995, ch. 628, § 15, eff from and after July 1, 1995 (became law without the Governor's signature).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

OPINIONS OF THE ATTORNEY GENERAL

The Department of Finance and Administration (DFA), in its resolution declaring the necessity for the issuance of bonds as authorized by § 31-31-15, may establish the limits of its involvement in the construction of the Mississippi Telecommunication Conference and Training Facility; it may in such resolution advise the Mississippi Telecommunication Conference and Training Facility Commission (i) if the Telecommunications Conference and Training Center were a customary state construction project, DFA would contract for construction of the entire project under a single contract entered into in accordance with public bid laws, and (ii) contracting in the manner set forth is also permitted under applicable law; and it may in such resolution direct that the commission should choose the method of contracting for the project which it determines to be in the public interest. Pittman, April 2, 1999, A.G. Op. #99-0158.

§ 31-31-31. Necessity for additional proceedings for issuance of bonds; adoption and effective date of resolution providing for issuance of bonds.

The bonds authorized under this chapter may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions and things that are specified or required by this chapter. Any resolution providing for the issuance of bonds under this chapter shall become effective immediately upon its adoption by the State Bond Commission, and any such resolution may be adopted at any regular or special meeting of the State Bond Commission by a majority of its members.

HISTORY: Laws, 1995, ch. 628, § 16, eff from and after July 1, 1995 (became law without the Governor's signature).

§ 31-31-33. Validation of bonds.

The bonds authorized under the authority of this chapter may be validated in the Chancery Court of the First Judicial District of Hinds County, Mississippi, in the manner and with the force and effect provided by this chapter, for the validation of county, municipal, school district and other bonds. The notice to taxpayers required by such statutes shall be published in a newspaper published or having a general circulation in the City of Jackson, Mississippi.

HISTORY: Laws, 1995, ch. 628, § 17, eff from and after July 1, 1995 (became law without the Governor's signature).

§ 31-31-35. Enforcement of rights by holders of bonds.

Any holder of bonds issued under this chapter or of any of the interest coupons pertaining to the bonds may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce all rights granted under this chapter, or under such resolution, and may enforce and compel performance of all duties required by this chapter to be performed, in order to provide for the payment of bonds and interest on the bonds.

HISTORY: Laws, 1995, ch. 628, § 18, eff from and after July 1, 1995 (became law without the Governor's signature).

§ 31-31-37. Investment in bonds by trustees, savings banks, trust companies, etc.; bonds as legal securities for deposit of public funds.

All bonds issued under this chapter shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi, and such bonds shall be legal securities that may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

HISTORY: Laws, 1995, ch. 628, § 19, eff from and after July 1, 1995 (became law without the Governor's signature).

§ 31-31-39. Exemption from taxation of bonds and income from bonds.

Bonds issued under this chapter and income from the bonds shall be exempt from all taxation in the State of Mississippi.

HISTORY: Laws, 1995, ch. 628, § 20, eff from and after July 1, 1995 (became law without the Governor's signature).

§ 31-31-41. Construction of chapter.

This chapter shall be deemed to be full and complete authority for the exercise of the powers granted, but this chapter shall not be deemed to repeal or to be in derogation of any existing law of this state.

HISTORY: Laws, 1995, ch. 628, § 21, eff from and after July 1, 1995 (became law without the Governor's signature).

TITLE 33.

MILITARY AFFAIRS

Chapter 1. Definitions and General Provisions Relating to the Military Forces. 33-1-1
Chapter 3. Commander in Chief, Military Department, and Governor's Staff. 33-3-1
Chapter 4. Mississippi Military Family Relief Fund. 33-4-1
Chapter 5. The Militia and Mississippi State Guard. 33-5-1
Chapter 7. National Guard. 33-7-1
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CHAPTER 1.

DEFINITIONS AND GENERAL PROVISIONS RELATING TO THE MILITARY FORCES

Sec.	
33-1-1.	Definition of terms.
33-1-3.	Support by counties and municipalities.
33-1-5.	Exemption from jury duty.
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33-1-9.	Compatibility of holding public office.
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33-1-25.	Right of way for military forces.
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33-1-29.	Organized militia may elect to come within provisions of Workers' Compensation Law.
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33-1-35.	Prior tenures, enlistments, rights and privileges preserved.
33-1-37.	Prior offenses not abolished.
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§ 33-1-1. Definition of terms.

In this chapter, and in Chapters 3, 5, 7, 9 and 11 of this title, the words:

(a) Military forces of the state–Shall mean the organized militia, the state retired list, the state reserve list, and the Mississippi State Guard, and all other components of the militia of the state which may hereafter be organized.

(b) Organized militia–Shall mean the Mississippi National Guard, including the Army National Guard and the Air National Guard, and the Mississippi State Guard when organized, and shall be deemed to include any unit, component, element, headquarters, staff or cadre thereof, as well as any member or members.

(c) Mississippi National Guard–Shall mean that part of the organized militia of this state which is organized, equipped and federally recognized under the provisions of the laws of the United States and of the State of Mississippi relating to the National Guard.

(d) Army National Guard–Shall mean the members of federally recognized units and organizations of the Mississippi National Guard which are a reserve component of the United States Army.

(e) Air National Guard–Shall mean the members of federally recognized units and organizations of the Mississippi National Guard which are a reserve component of the United States Air Force.

(f) Military–Shall include Army, Air and Naval Forces.

(g) Military fund–Shall mean any and all monies appropriated by the Legislature for the support of the militia and such other revenues as may be received or collected by the military department.

(h) Federal recognition or federally recognized–Shall mean acknowledgment by the Secretary of the Air Force or the Secretary of the Army that an individual has been appointed to an authorized grade and position vacancy appropriate to his qualifications in the Air National Guard, or the Army National Guard, and that he meets the prescribed federal requirements for such grade and position; or that the particular unit or organization has been recognized by the Secretary of the Air Force or the Secretary of the Army as a component of the Air National Guard or Army National Guard of the United States.

(i) Unit or organization–Shall mean a single military organization having a mission, function, and a structure prescribed by competent authority.

(j) Active state duty–Shall mean active military duty in other than a training status in or with a force of the organized militia or with the Adjutant General's Department, upon the orders of the Governor.

(k) State training duty–Shall mean military duty in a training status authorized under Title 32 of the United States Code, Annotated, and regulations issued thereunder.

(*l*) Service of the United States or active service of the United States–Shall mean any active military duty in the Armed Forces of the United States except duty for training purposes.

(m) Officer–Shall include commissioned officers and warrant officers of the militia of this state unless otherwise specified.

(n) Enlisted man–Shall be understood to designate members of the militia of this state other than officers and warrant officers.

(o) Gender–Words importing the masculine gender only shall apply to female as well as male.

HISTORY: Codes, 1942, § 8519-01; Laws, 1966, ch. 539, § 1, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense §§ 1 et seq.

Law Reviews.

Separation of Powers at the State Level, Part II: Service in a Civilian Public Office and in the National Guard, 74 Miss. L.J. 47, Fall, 2004.

§ 33-1-3. Support by counties and municipalities.

The board of supervisors of any county or the governing authorities of any municipality, either or both, may aid one or more federally recognized units of the Mississippi National Guard, or one or more units of the Mississippi State Guard, by appropriating annually a sum of money to be paid to the commander of each such unit, who shall account for and expend same under and in accordance with such regulations as the Adjutant General shall make. The board of supervisors of any county, the governing authorities of any municipality or the trustees of any school district, or any one or more of them, are further empowered to make such appropriations as they see fit for constructing, reconstructing, repairing, rehabilitating and improving military installations and property for the use of the Mississippi National Guard and Mississippi State Guard.

In all cases where the board of supervisors of counties, the governing authorities of municipalities or the trustees of school districts have, prior to June 1, 1966, executed leases or conveyances of land for purposes authorized by this title, such leases and conveyances are hereby ratified, confirmed and validated.

HISTORY: Codes, 1942, § 8519-121; Laws, 1966, ch. 539, § 80; Laws, 1980, ch. 337, eff from and after July 1, 1980.

Cross References — Constitutional authority for county aid to military forces of state, see Miss. Const. Art. 9, § 222.

OPINIONS OF THE ATTORNEY GENERAL

A City may donate a fire truck which is surplus property to the Mississippi State Guard pursuant to Section 33-1-3. Gabriel, May 3, 1995, A.G. Op. #95-0015.

The governing authorities of a county or a municipality may provide labor, equipment, and all necessary materials to construct, reconstruct, repair, rehabilitate, and improve military installations and property for the use of the Mississippi National Guard and the Mississippi State Guard. Haque, Sept. 28, 2001, A.G. Op. #01-0577.

A municipality may not provide free water service to a Mississippi National Guard unit. Pearson, July 19, 2002, A.G. Op. #02-0398.

A county may purchase land and donate it to the Mississippi National Guard, and such purchase and donation is completely discretionary with the governing authority and there is no obligation to do such. Shaw, Jan. 24, 2003, A.G. Op. #03-0018.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense § 7.

§ 33-1-5. Exemption from jury duty.

Any member of the Mississippi National Guard on active duty shall be exempt from jury duty upon presenting a current written statement from his superior officer that such jury service will be likely to interfere with his military duties.

HISTORY: Codes, 1942, § 8519-122; Laws, 1966, ch. 539, § 81; Laws, 2004, 1st ex. Sess., ch. 1, § 13; Laws, 2006, ch. 437, § 8, eff from and after passage (approved Mar. 20, 2006).

Cross References — General exemptions from jury duty, see § 13-5-23.

§ 33-1-7. Exemption from arrest.

No person belonging to the military forces of this state shall be arrested by any civil authority under any civil or criminal process while going to, remaining at or returning from any place at which he may be required to attend military duty except for treason or felony. Service of any such prohibited process shall be void.

HISTORY: Codes, 1942, § 8519-123; Laws, 1966, ch. 539, § 82, eff from and after June 1, 1966.

Cross References — Constitutional authority for exemption from arrest, see Miss. Const. Art. 9, § 220.

OPINIONS OF THE ATTORNEY GENERAL

The language in Section 33-1-7 is very limited in scope in that it only goes to immediate or on the spot arrest and not to misdemeanor prosecutions. Therefore, military personnel, while exempt from immediate arrest, are not exempt from misdemeanor prosecutions which are to be tried at a later date. Kirschten, February 1, 1995, A.G. Op. #95-0063.

§ 33-1-9. Compatibility of holding public office.

Any citizen of this state may accept and hold a commission or warrant in the militia of this state or hold enlisted membership in the militia of this state or a commission in any reserve component of the Armed Forces of the United States without vacating any civil office, position or commission held by him, and the acceptance or holding of any such commission, warrant or membership and receiving pay therefrom shall not constitute such holding of an office of privilege and trust under the government of this state or of the United States as shall be incompatible with the holding of any civil office, legislative or judicial, or position or commission under the government of this state and receiving the emoluments therefor.

HISTORY: Codes, 1942, § 8519-124; Laws, 1966, ch. 539, § 83, eff from and after June 1, 1966.

OPINIONS OF THE ATTORNEY GENERAL

One may serve in the National Guard without vacating any civil office in either the legislative or judicial branch of government. Purnell, June 7, 2002, A.G. Op. #02-0257.

A municipal alderman may serve as a member of the National Guard without running afoul of Miss. Const., art. 1, §§ 1 and 2. Moore, Nov. 15, 2002, A.G. Op. #02-0663.

An individual may continue to hold the elective office of supervisor and draw the salary and benefits associated with that position while on federal active duty. Barbour, June 11, 2004, A.G. Op. 04-0265.

RESEARCH REFERENCES

Law Reviews.
Separation of Powers at the State Level, Part II: Service in a Civilian Public Office and in the National Guard, 74 Miss. L.J. 47, Fall, 2004.

§ 33-1-11. Authority over civilians interfering with militia.

If any person shall interrupt, molest, or insult, by abusive words or behavior, or shall obstruct or interfere with any officer or enlisted man while on duty at any parade, drill or meeting of his military organization, or while engaged in the performance of any other proper military duty, he shall immediately be put under guard, and may be kept, at the discretion of the commissioned officer in charge, until the parade, drill meeting or duty is concluded; and the commissioned officer in charge may commit such person to any police officer or constable of any municipality or beat where such parade, drill, meeting, or duty is being performed, or the sheriff of the county, or his deputy, who shall hold such person for trial before a court having jurisdiction of the place, and any person so offending shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not to exceed one hundred dollars ($100.00) or by imprisonment not to exceed thirty (30) days, or both such fine and imprisonment.

HISTORY: Codes, 1942, § 8519-125; Laws, 1966, ch. 539, § 84, eff from and after June 1, 1966.

Cross References — Commanding officer may fix limits to military jurisdiction, see § 33-7-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 249, 251.

§ 33-1-13. Discrimination against uniform.

Any proprietor, manager or employee of a theater, hotel, restaurant, or any other public place, who shall make or cause to be made any discrimination against any person lawfully wearing the uniform of the Armed Forces of the

United States of America or of the State of Mississippi, because of the uniform worn, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not to exceed five hundred dollars ($500.00).

HISTORY: Codes, 1942, § 8519-126; Laws, 1966, ch. 539, § 85, eff from and after June 1, 1966.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 33-1-15. Discrimination by private employers.

Any person, firm or corporation who alone, or in conjunction with others, wilfully deprives a member of any reserve component of the Armed Forces of the United States, or any former member of the service of the United States discharged or released therefrom under conditions other than dishonorable, of his employment, prevents his being employed by himself or another, or discriminates in any of the conditions or emoluments of his employment because of his membership in such reserve component, or former membership in such service; or, by threat of injury to him, physical or otherwise, dissuades or attempts to dissuade any person from enlistment, or acceptance of a warrant or commission, in any reserve or active component of the Armed Forces of the United States shall be guilty of a misdemeanor and on conviction thereof, shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00), or by imprisonment for not more than six (6) months, or both such fine and imprisonment.

HISTORY: Codes, 1942, § 8519-127; Laws, 1966, ch. 539, § 86; Laws, 1974, ch. 473, § 1; Laws, 1991, ch. 492 § 1, eff from and after passage (approved March 30, 1991).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Federal Aspects— Denial of retention in employment, promotion or other incident or advantage of employment because of obligation as member of reserve component of Armed Forces of United States, see 38 USCS § 4316.

RESEARCH REFERENCES

ALR.

What constitutes denial of "incidents or advantages of employment" under 38 USCS § 2021(b)(3) which may not be denied employee because of obligation as member of reserve component of Armed Forces. 51 A.L.R. Fed. 893.

Applicability to fringe benefits of Vietnam Era Veterans' Readjustment Assistance Act provision establishing veterans' reemployment rights (38 USCS § 2021). 83 A.L.R. Fed. 908.

§ 33-1-17. Discrimination by associations.

No association or corporation, constituted or organized for the purpose of promoting the success of the trade, employment or business of the members thereof, shall by any constitution, rule, bylaw, resolution, vote or regulation discriminate against any member of any reserve component of the Armed Forces of the United States, or any former member of the service of the United States discharged or released therefrom under conditions other than dishonorable, because of such membership, or such former membership, in respect to the eligibility of such member, or such former member, in such association or corporation, or in respect to his rights to retain said last mentioned membership. Any person who aids in enforcing any such provisions against a member of such reserve component, or such former member of the service, with intent to discriminate against him because of such membership, or such former membership, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than six (6) months, or by both.

HISTORY: Codes, 1942, § 8519-128; Laws, 1966, ch. 539, § 87; Laws, 1974, ch. 473, § 2; Laws, 1991, ch. 492 § 2, eff from and after passage (approved March 30, 1991).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Federal Aspects— Denial of retention in employment, promotion or other incident or advantage of employment because of obligation as member of reserve component of Armed Forces of United States, see 38 USCS § 4316.

RESEARCH REFERENCES

ALR.

Applicability to fringe benefits of Vietnam Era Veterans' Readjustment Assistance Act provision establishing veterans' reemployment rights (38 USCS § 2021). 83 A.L.R. Fed. 908.

§ 33-1-19. Re-employment rights.

Any person who is a member of any reserve component of the Armed Forces of the United States, or former member of the service of the United States discharged or released therefrom under conditions other than dishonorable, who, in order to perform duties or receive training with the Armed Forces of the United States, or of the State of Mississippi or any other state (including active state duty, state-training duty or any other military duty authorized under Title 10 or Title 32 of the United States Code), leaves a position, other than a temporary position, in the employ of any employer, and who shall give evidence of the satisfactory completion of such duty or training, and who is still qualified to perform the duties of such position, shall be entitled to be restored to his previous or a similar position, in the same status, pay and seniority, and such period of absence for military duty or training shall be construed as an absence with leave but may be without pay.

HISTORY: Codes, 1942, § 8519-129; Laws, 1966, ch. 539, § 88; Laws, 1974, ch. 473, § 3; Laws, 1994, ch. 432, § 1, eff from and after passage (approved March 17, 1994); Laws, 2018, ch. 342, § 1, eff from and after July 1, 2018.

Federal Aspects— Employment and reemployment rights of members of the uniformed services, see 38 USCS §§ 4301 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Legislature did not intend to extend scope of protection of law regarding reemployment of employees who receive military training to employees with temporary positions. Hilliard, July 5, 1990, A.G. Op. #90-0465.

Even when a state agency has a policy of granting administrative leave for court services or appearances, the agency may require an employee serving as a witness or juror or party litigant to take personal leave, compensatory leave, or leave without pay (where personal leave and compensatory leave have been exhausted) if the employee's court service or appearance is not verified by the clerk of the court. Taylor, June 7, 1999, A.G. Op. #99-0207.

RESEARCH REFERENCES

ALR.

When does sale or reorganization exempt business from re-employment requirements of military veterans' re-employment laws (38 USCS §§ 2021 et seq). 63 A.L.R. Fed. 132.

§ 33-1-21. Officers and employees granted leave.

(a) All officers and employees of any department, agency, or institution of the State of Mississippi, or of any county, municipality, or other political subdivision, who shall be members of any of the reserve components of the Armed Forces of the United States, or former members of the service of the United States discharged or released therefrom under conditions other than dishonorable, shall be entitled to leave of absence from their respective duties, without loss of pay, time, annual leave, or efficiency rating, on all days during which they shall be ordered to duty to participate in training at encampments, field exercises, maneuvers, outdoor target practice, or for other exercises, for periods not to exceed fifteen (15) days, and all such officers and employees shall for such periods in excess of fifteen (15) days, be entitled to leave of absence from their respective duties without loss of time, annual leave, or efficiency rating until relieved from duty, and shall when relieved from such duty, be restored to the positions held by them when ordered to duty, or a position of like seniority, status and pay; provided that such person: (1) when discharged or released from the armed forces shall have received a certificate of satisfactory completion of service, (2) shall be still qualified to perform the duties of such position, (3) shall make application for re-employment within ninety (90) days after June 1, 1966, within ninety (90) days after such person is relieved from such training and service or released from hospitalization for a period of not more than one (1) year for causes attributable to such services. Any person restored to a position under the above provisions shall not be discharged from such position without cause within (1) year after restoration. The fact that there has been a change of administration affecting any position with the State of Mississippi, or any county, city, town, political subdivision, or any state institution thereof shall in no manner affect or deny to such person his former position, and regardless of any limitation on the number of employees, such person shall be re-employed. The provisions of this section do not apply to any officer elected by the vote of the electors of the state, county, municipality, or political subdivisions, when the statutory or constitutional term of the office has expired upon the discharge of such person from military service, but this section does grant re-employment rights to all other officers and employees of the State of Mississippi, or of any county, municipality, or political subdivision when ordered to military duty.

(b) In the event the persons referred to in the foregoing subsection are not reinstated, as therein required, upon application by any such person to the county attorney of the county in which he was employed, or to the district attorney of the district in which he was employed, such attorney applied to shall act as the attorney for such person and shall institute such action as may be necessary to enforce compliance with the provisions of said subsection, and no fees or court costs shall be taxed against the person applying for benefits thereunder.

(c) Insofar as any of the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall be considered controlling, and any other acts or parts of acts in conflict herewith are hereby repealed insofar as they are in conflict with this section.

HISTORY: Codes, 1942, § 8519-130; Laws, 1966, ch. 539, § 89; Laws, 1974, ch. 473, § 4, eff from and after passage (approved March 30, 1974).

Federal Aspects— Employment and reemployment rights of members of the uniformed services, see 38 USCS §§ 4301 et seq.

JUDICIAL DECISIONS

1. In general.

One acting as mayor and municipal trial judge under appointment by Governor because of absence of duly elected mayor in armed forces under indefinite leave of absence granted by board of aldermen was at least a de facto officer, whose acts in connection with the trial and conviction in misdemeanor cases were valid. Upchurch v. Oxford, 196 Miss. 339, 17 So. 2d 204, 1944 Miss. LEXIS 199 (Miss. 1944).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 33-1-21 does not require continuation of health insurance or other benefits during period of unpaid military leave; rather, employee's coverage is suspended during time of unpaid military leave and reinitiated upon return to work after being relieved from military duty; if group policy also covers employee's family, employee may, at his/her own expense, pay premium necessary to continue family coverage. Creekmore, Apr. 28, 1993, A.G. Op. #93-0284.

Under Section 33-1-21, a state employee is entitled to a total of fifteen days of military leave with pay each calendar year. If such employee needs additional time to complete his or her military orders, that employee is entitled to that time without pay, but without affecting loss of time, annual leave, or efficiency rating. Taylor, September 7, 1995, A.G. Op. #95-0609.

Under Section 33-1-21, municipal and school district employees are entitled to their full regular salaries in addition to any pay they might receive if ordered to military duty for a period not exceeding fifteen working days. The same rule would apply to county employees. Jones, March 29, 1996, A.G. Op. #96-0183.

A county worker is entitled to such leave as specified in Section 33-1-21 for attending not only summer camp, but also week-end drills, if he is scheduled to work on those weekends. Strider, October 25, 1996, A.G. Op. #96-0733.

National Guard members are entitled to military leave without loss of pay for up to 15 days each calendar year, and any military leave time in excess of that 15 days will be without pay. Presley, Mar. 22, 2002, A.G. Op. #02-0120.

As long as a municipal employee is engaged in any military activity, Section 33-1-21 is applicable. Campbell, Nov. 1, 2002, A.G. Op. #02-0602.

Municipality's obligation to an employee is discharged upon the payment of an employee's regular salary for a period of 15 days; this does not relieve any obligation upon the municipality regarding loss of time, annual leave or efficiency ratings, or any obligation to restore individuals to their prior positions with the municipality or a similar ones. Campbell, Nov. 1, 2002, A.G. Op. #02-0602.

Employees are allowed 15 days of military leave for each calendar year, even if the employee remained under the same military orders as the prior year. Campbell, Nov. 1, 2002, A.G. Op. #02-0602.

If an employee has already received 15 days of pay, then later receives another set of military orders affecting the same calendar year, the municipality would not be required to provide an additional 15 days of pay. Campbell, Nov. 1, 2002, A.G. Op. #02-0602.

Municipal employees ordered to military duty would be entitled to their full regular salary for a period not exceeding 15 days in addition to any military pay received during that period. Campbell, Nov. 1, 2002, A.G. Op. #02-0602.

Under Section 33-21-1(a) [33-1-21(a)], the fifteen-day annual maximum on military leave applies to a county employee, including an employee of a community hospital or county nursing home established pursuant to Section 41-13-15. McDonald, Mar. 4, 2005, A.G. Op. 05-0064.

An employee who is on either paid or unpaid military leave during the time of a legal holiday is not working on that holiday, and would not be entitled to holiday pay. An employee may also choose to use any accrued personal leave to supplement the paid military leave. Fox, Mar. 17, 2006, A.G. Op. 06-0006.

One must be actually serving on active duty status in the armed forces in order to be entitled to the benefits provided in Section 33-1-21. Shoemake, Oct. 20, 2006, A.G. Op. 06-0517.

RESEARCH REFERENCES

ALR.

Validity and construction of state statutes requiring employers to compensate employees for absences occasioned by military service. 8 A.L.R.4th 704.

§ 33-1-23. Assignment of pay.

No assignment of pay by any officer or enlisted man of the organized militia shall be valid, except as may be otherwise provided by the Governor.

HISTORY: Codes, 1942, § 8519-131; Laws, 1966, ch. 539, § 90, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 155.

§ 33-1-25. Right of way for military forces.

All units of the military forces of the state shall have the right of way over all other traffic except emergency vehicles and vehicles carrying the United States mail when travelling over any street or highway of this state. All members of the military forces of this state and the vehicles occupied by them shall be allowed to pass free through all toll gates and over all bridges and ferries when performing any military duties or going to or returning from any place set for the performance of such duties.

HISTORY: Codes, 1942, § 8519-132; Laws, 1966, ch. 539, § 91, eff from and after June 1, 1966.

§ 33-1-27. Wounded, disabled or injured members of the military forces of Mississippi.

(a) Every member of the military forces of this state who shall be wounded, disabled or injured, or who shall contract any disease or illness, in line of duty when in the service of this state on active state duty shall be entitled to and shall receive, or be reimbursed for, hospitalization, rehospitalization, and medical and surgical care in a hospital and at his home appropriate for the treatment of such wounding, disability, injury, disease or illness, and necessary transportation incident thereto so long as such wounding, disability, injury, disease or illness exists, and shall receive the same pay and allowance whether in money or in kind, to which he was entitled at the time when the injury was incurred or the disease or illness contracted, during the period of his disability but not for more than a total of twelve (12) months after the end of his tour of duty. In the event of his death in such cases, his estate shall be entitled to any reimbursement and compensation to which the deceased would have been entitled, to his accrued pay and allowances, and reimbursement for actual funeral expenses not to exceed the sum of Five Hundred Dollars ($500.00). Such payments to the estate, as well as the cost of carrying out the other provisions of this section, shall be paid out of the military fund in the same manner provided for other expenditure of state funds. However, no compensation or reimbursement shall be paid in any case where the same is payable under the provisions of any federal law or regulation.

(b) The Adjutant General shall administer the provisions of this section and shall prescribe such rules and regulations not inconsistent with the law as may be necessary to carry out the provisions of this section and the decision as to whether any wounding, disability, injury, disease, illness or death is in line of duty or as a result thereof, shall be made by the Adjutant General after proper investigation and hearing pursuant to such regulations as he may prescribe. Further, the Adjutant General shall have power to make interagency agreements or contracts with any agency of the state government to carry out the provisions of this section.

(c) The provisions of this section shall be in no way construed to be a gratuity but shall be construed to be compensation for services for which each member of the military forces of this state shall be deemed to have bargained for and considered as a condition of his enlistment or appointment.

HISTORY: Codes, 1942, § 8519-89; Laws, 1966, ch. 539, § 60, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 69.

§ 33-1-29. Organized militia may elect to come within provisions of Workers' Compensation Law.

The organized militia of the State of Mississippi, also known as the Mississippi National Guard, may elect by proper action to come within the provision of the Mississippi Workmen's Compensation Law, and in such event shall notify the workmen's compensation commission of such action. After having made such an election, the said Mississippi National Guard may be a self-insurer without the requirement of paying the registration fee as required by Section 71-3-101 of the Workmen's Compensation Law and without the requirement of filing a self-insurer bond; and may make payment of compensation benefits from any appropriations or funds available to the Mississippi Military Department or any subdivision thereof, provided that such benefits shall be paid only for injuries sustained as a direct result of active military service for the State of Mississippi by direction of an executive order of the Governor of the State of Mississippi. For the purpose of determining the average weekly wages of the person entitled to benefits herein, said wages shall be computed on the basis of his earnings in civilian life or on the basis of his current military pay, whichever shall be greater.

HISTORY: Codes, 1942, § 8519-161; Laws, 1964, ch. 476, eff from and after July 1, 1964.

Editor's Notes — Chapter 408 of Laws, 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

OPINIONS OF THE ATTORNEY GENERAL

Officers and members of the Mississippi National Guard placed on State Active Duty are eligible for Workers' Compensation coverage under Section 33-1-29. Tucker, March 10, 1995, A.G. Op. #95-0124.

§ 33-1-31. Unlawful military-type organizations.

It shall be unlawful for any body of men whatsoever, other than the regularly organized armed militia of this state, the Armed Forces of the United

States, and the students of public or of regularly chartered educational institutions where military science is a prescribed part of the course of instruction and color guards or ceremonial firing squads of veterans organizations chartered by acts of congress, to associate themselves together as a military organization for drill or parade in public with firearms in this state, without special license from the Governor for each occasion. Application for such license must be approved by the mayor and board of aldermen or commissioners of the town or city where such organization may propose to parade. Any person or persons participating in such unlawful association shall be guilty of a misdemeanor and on conviction of same shall be punished by imprisonment in the county jail for a term not to exceed six months (6) or by a fine not to exceed Five Hundred Dollars ($500.00) or both fine and imprisonment, at the discretion of the court. The Governor may permit the passage through or the attendance in the state of the organized militia of other states for the purpose of attending joint maneuvers, rifle competitions, or for such other purposes as he may deem proper.

HISTORY: Codes, 1942, § 8519-32; Laws, 1966, ch. 539, § 21, eff from and after June 1, 1966.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 35.

§ 33-1-33. Civilian guards on military facilities and reservations; peace officer powers for designated personnel of military police units.

(1) The civilian guards employed by the military department, whether paid by state appropriations, federal funds, or other authorized funds, or any combination thereof, and assigned to duties of safeguarding personal and real property belonging to the state or United States or government mixed properties or personal properties belonging to officers and men of the National Guard or of the employees of the military department are hereby given peace officer powers of a constable on the military facilities and reservations to which such civilian guards are assigned.

(2) During periods of annual training, the Adjutant General may designate personnel of military police units to have peace officer powers of a constable on all military facilities, airfields, or reservations belonging to the Mississippi National Guard including, but not limited to, Camp McCain, Grenada, Mississippi, Camp Shelby, Hattiesburg, Mississippi, and the Air National Guard Training Site, Gulfport, Mississippi, Key Field, Meridian, Mississippi, Thompson Field, Jackson, Mississippi, and Hawkins Field, Jackson, Mississippi, to supplement the civilian guards in subsection (1) above.

(3) The Adjutant General may designate civilian guard employee duties to be of such a nature as to require the employee to meet the requirements established by the Board on Law Enforcement Officer Standards and Training for law enforcement officers. For purposes of enforcement, these civilian guard employees shall have the powers of law enforcement officers on the military facilities and reservations to which assigned. The Adjutant General, Mississippi Military Department, the Mississippi National Guard and any designated civilian guard employee including, but not limited to, peace officers and armed or unarmed civilian guards, shall have discretion in the performance of their duties and shall be immune from liability as provided for in Section 11-46-1 et seq. Monies from the State General Fund may be utilized for the training of these officers at the Mississippi Law Enforcement Officers' Training Academy.

HISTORY: Codes, 1942, § 8519-103.5; Laws, 1971, ch. 387, § 1; Laws, 1974, ch. 330; Laws, 2003, ch. 490, § 1; Laws, 2016, ch. 367, § 1, eff from and after July 1, 2016.

Cross References — General duties of constables, see § 19-19-5.

§ 33-1-35. Prior tenures, enlistments, rights and privileges preserved.

Nothing contained in this chapter, and in chapters 3, 5, 7, 9 and 11 of this title, shall be construed to affect the appointment, enlistment, tenure in office, period of enlistment, rights, privileges, immunities, compensation, emoluments, or other rights of the Adjutant General, commissioned officers, warrant officers, or enlisted men of the Army and Air National Guard of this state.

HISTORY: Codes, 1942, § 8519-151; Laws, 1966, ch. 539, § 94, eff from and after June 1, 1966.

§ 33-1-37. Prior offenses not abolished.

All offenses committed and all penalties, forfeitures, fines or liabilities incurred prior to June 1, 1966 under any law embraced in or modified, changed, or repealed by the act enacting this chapter and Chapters 3, 5, 7, 9 and 11 of this title may be prosecuted, punished and enforced, and action thereon may be completed, in the same manner and with the same effect as may have been properly done under such prior law.

HISTORY: Codes, 1942, § 8519-152; Laws, 1966, ch. 539, § 95, eff from and after June 1, 1966.

§ 33-1-39. Extension of professional license issued active duty military personnel; qualification for extension; fees.

A professional license issued pursuant to any provision of Title 73 to any member of the Mississippi National Guard or the United States Armed Forces

Reserves shall not expire while the member is serving on federal active duty and shall be extended for a period not to exceed ninety (90) days after his return from federal active duty. If the license is renewed during the ninety-day period after his return from federal active duty, the member shall only be responsible for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as, but not limited to, late fees or delinquency fees. The member shall present to the authority issuing the professional license a copy of his official military orders or a written verification from the member's commanding officer before the end of the ninety-day period in order to qualify for the extension.

HISTORY: Laws, 2007, ch. 309, § 1, eff from and after passage (approved Mar. 8, 2007).

CHAPTER 3.

COMMANDER IN CHIEF, MILITARY DEPARTMENT, AND GOVERNOR'S STAFF

Sec.

33-3-1.	Commander in Chief.
33-3-3.	Military department.
33-3-5.	Division of military staff.
33-3-7.	Adjutant General.
33-3-9.	Assistant adjutants general.
33-3-11.	General powers and duties of Adjutant General.
33-3-13.	Seal; form and effect thereof.
33-3-15.	Rules and regulations.
33-3-17.	Awards, medals and decorations.

§ 33-3-1. Commander in Chief.

The Governor shall be Commander in Chief of the militia and each of the classes thereof, except when it is called into the service of the United States, and shall have power to call forth the militia to execute the laws, repel invasion, and to suppress riots and insurrections, and to perform such other functions as may be authorized by law.

HISTORY: Codes, 1942, § 8519-11; Laws, 1966, ch. 539, § 2, eff from and after June 1, 1966.

Cross References — Constitutional authority of Governor as commander in chief, see Miss. Const. Art. 5, § 119.

Powers of Governor, generally, see § 7-1-5.

Definitions of terms used in this chapter, see § 33-1-1.

Retention of prior tenures, enlistments, rights and privileges, see § 33-1-35.

Prior offenses not abolished, see § 33-1-37.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense §§ 3, 30.

Law Reviews.

Separation of Powers at the State Level, Part II: Service in a Civilian Public Office and in the National Guard, 74 Miss. L.J. 47, Fall, 2004.

§ 33-3-3. Military department.

There shall be in the executive branch of the state government a military department. The Adjutant General shall be the executive head of the department and, as such, subordinate only to the Governor in matters pertaining thereto. There shall be in such department at least one (1) Assistant Adjutant General for Army, at least one (1) Assistant Adjutant General for Air, such other Assistant Adjutants General as may be authorized by rules and regulations of the National Guard Bureau of the United States of America, and such other officers, enlisted men and civilian employees as the Adjutant General shall, from time to time, determine.

HISTORY: Codes, 1942, § 8519-12; Laws, 1966, ch. 539, § 3; Laws, 1984, ch. 314, eff from and after passage (approved April 4, 1984).

Cross References — Constitutional authority for appointment of officers by Governor, see Miss. Const. Art. 9, § 216.

Exemption of military department from provisions as to opening and staffing of state offices, see § 25-1-98.

RESEARCH REFERENCES

ALR.

Construction and application of Posse Comitatus Act (18 USCS § 1385), and similar predecessor provisions, restricting use of United States Army and Air Force to execute laws. 141 A.L.R. Fed. 271.

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense § 28.

Law Reviews.

Separation of Powers at the State Level, Part II: Service in a Civilian Public Office and in the National Guard, 74 Miss. L.J. 47, Fall, 2004.

§ 33-3-5. Division of military staff.

The military staff of the Governor shall be divided into two kinds: the personal staff of the Governor and the military staff of the military department. The Governor may detail from the active list not more than ten National Guard officers, who, in addition to their regular duties, shall perform the duties of aides de camp on the personal staff of the Governor. In addition thereto the Governor may appoint such aides from the citizenship of this state as he shall choose, such appointees from the citizenship of the state to bear the honorary title of colonel and to have the right to wear such uniform as may be prescribed by the Governor, but who shall not by virtue of such appointment be deemed a part of the Mississippi National Guard and who shall not by virtue of such appointment participate directly or indirectly in the appropriations made by this state or by the United States for the support of the military department. The appointment of all aides shall terminate upon the expiration of the term of office of the Governor upon whose staff they may be serving.

HISTORY: Codes, 1942, § 8519-14; Laws, 1966, ch. 539, § 4, eff from and after June 1, 1966.

RESEARCH REFERENCES

Law Reviews.

Separation of Powers at the State Level, Part II: Service in a Civilian Public Office and in the National Guard, 74 Miss. L.J. 47, Fall, 2004.

§ 33-3-7. Adjutant General.

(1) The Governor shall nominate and, by and with the consent of the Senate, appoint and commission an Adjutant General, which appointment shall carry with it the rank of major general; provided, however, that if the person nominated is a retired officer who has attained a rank higher than that of major general he may, at the discretion of the Governor, retain such rank but his compensation shall not be increased above that amount hereinafter provided. The four-year term of the Adjutant General shall expire with the expiration of the appointing Governor's term of office. The Adjutant General shall be chief of staff to the Governor, subordinate only to the Governor in matters affecting the military department and militia of this state.

(2) To be eligible for such appointment, the Adjutant General shall have attained at least the rank of colonel, shall be eligible to receive federal recognition upon his appointment, and shall have served at least seven (7) years in the Armed Forces of the United States, either in active federal service or as a member of a reserve component, with at least three (3) years of such service in the Mississippi National Guard. At least five (5) years of such service shall have been as a commissioned officer.

HISTORY: Codes, 1942, § 8519-14; Laws, 1966, ch. 539, § 5; Laws, 1972, ch. 422, §§ 1, 2; Laws, 1975, ch. 349; Laws, 1976, ch. 323; Laws, 1984, ch. 316; Laws, 1993, ch. 380, § 1; Laws, 1994, ch. 431, § 1, eff from and after passage (approved March 17, 1994).

Cross References — Constitutional authority for Governor's appointment of Adjutant General, see Miss. Const. Art. 9, § 219.

Administration of National Guard Education Assistance Law by the adjutant general, see § 33-7-411.

OPINIONS OF THE ATTORNEY GENERAL

Once a "senior full-time Assistant Adjutant General" is properly appointed and in place, he may perform all the duties of the Adjutant General in cases of death, absence, or inability of the Adjutant General to act, and this includes inability of the Adjutant General to act due to a vacancy in that office, including a vacancy caused by the Senate's failure to confirm an appointment; however, a recommendation from the Adjutant General is required in order for the Governor to appoint Assistant Adjutants General and, therefore, by necessity, there must first be an Adjutant General holding office in order to make a recommendation for appointment of an Assistant. Johnson, July 5, 2000, A.G. Op. #2000-0275.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense § 3.

§ 33-3-9. Assistant adjutants general.

The Governor, on recommendation of the Adjutant General, shall appoint at least one (1) Assistant Adjutant General for Army and at least one (1) Assistant Adjutant General for air and such other assistant adjutants general as may be authorized by rules and regulations of the National Guard Bureau of the United States of America. Each shall have the rank of Brigadier General, or higher, if authorized by the National Guard Bureau of the United States of America. Each shall remain in office during the pleasure of the Governor, and shall be entitled to all the rights, privileges and immunities granted officers of like rank in the Mississippi National Guard. Each shall, before entering upon the duties of their office, take and subscribe to the oath of office prescribed for officers of the Mississippi National Guard, which oaths shall be deposited in the office of the Adjutant General. Each shall aid the Adjutant General by the performance of such duties as may be assigned him. In the case of death, absence or inability of the Adjutant General to act, the senior full-time Assistant Adjutant General shall perform the duties of the Adjutant General until the Adjutant General shall resume his duties or until a successor shall be appointed. To be qualified for appointment as Assistant Adjutant General, a person must at the time of his appointment possess the same qualifications required of the Adjutant General.

HISTORY: Codes, 1942, § 8519-15; Laws, 1966, ch. 539, § 6; Laws, 1983, ch. 426; Laws, 1989, ch. 473, § 1; Laws, 1996, ch. 359, § 1, eff from and after July 1, 1996.

Cross References — Constitutional authority for Governor's appointment of Assistant Adjutants General, see Miss. Const. Art. 9, §§ 218, 219.

Number of Assistant Adjutant Generals for the state military department, see § 33-3-3.

OPINIONS OF THE ATTORNEY GENERAL

Once a "senior full-time Assistant Adjutant General" is properly appointed and in place, he may perform all the duties of the Adjutant General in cases of death, absence, or inability of the Adjutant General to act, and this includes inability of the Adjutant General to act due to a vacancy in that office, including a vacancy caused by the Senate's failure to confirm an appointment; however, a recommendation from the Adjutant General is required in order for the Governor to appoint assistant adjutants general and, therefore, by necessity, there must first be an Adjutant General holding office in order to make a recommendation for appointment of an Assistant. Johnson, July 5, 2000, A.G. Op. #2000-0275.

§ 33-3-11. General powers and duties of Adjutant General.

The Adjutant General shall:

(a) Appoint all of the employees of his department and he may remove any of them at his discretion;

(b) Keep rosters of all active, reserve and retired members of the militia of this state, and keep in his office all records and papers required to be kept and filed therein;

(c) Submit to the Governor in each year preceding a regular session of the Legislature a printed detailed report of the transactions of his office, the expenses thereof, and such operations and conditions of the National Guard of this state as may be required by the Governor;

(d) Cause the military law, the regulations of the National Guard of this state and such other military publications as may be necessary for the military service to be distributed at the expense of the state to commands so that all personnel of the National Guard of this state will have access to same;

(e) Keep records on and preserve all military property belonging to the state;

(f) Keep just and true accounts of all monies received and disbursed by him;

(g) Attest all commissions and warrants issued to military officers of this state;

(h) Have a seal;

(i) Make such regulations pertaining to the preparations of reports and returns and to the care and preservation of property in possession of the state for military purposes, whether belonging to the state or the United States, as in his opinion the conditions demand;

(j) Attend the care, preservation, safekeeping, transportation and repairing of the arms, ordnance, accouterments, equipment and all other military property belonging to the state or issued to the state by the government of the United States for military purposes, and keep accurate accounts thereof;

(k) Issue such military property as the necessity of the services require and make purchases for that purpose. No military property shall be issued or loaned, except upon an emergency, to persons or organizations other than those belonging to the National Guard of Mississippi except to such portions of the unorganized militia as may be called out by the Governor;

(*l*) Keep the reports and returns of troops and all other writings and documents required to be preserved by the state military headquarters;

(m) Keep necessary records attesting to the service of individuals of Mississippi forces for the Spanish American War and all subsequent wars and insurrections. The Adjutant General is authorized to make a determination as to when old records have only historical value, and therefore, transfer them to the State Department of Archives and History for reference and preservation;

(n) Those records and relics not required for efficient operation of the military department may be turned over to the Department of Archives and History for preservation;

(o) The Adjutant General with the approval of the Governor shall provide for and be responsible for the organization, training, tactical employment, and discipline of the Mississippi National Guard, Mississippi State Guard, and the unorganized militia when called to active state duty.

HISTORY: Codes, 1942, § 8519-16; Laws, 1966, ch. 539, § 7; Laws, 2005, 2nd Ex Sess, ch. 6, § 3, eff from and after passage (approved June 14, 2005).

Editor's Notes — Laws of 1992, ch. 490, effective from and after passage (approved May 11, 1992) provides as follows:

"WHEREAS, the 1065th Transportation Company of the Mississippi Army National Guard was ordered to active duty during the height of the 'Berlin Crisis' in 1961; and

"WHEREAS, the personnel of the 1065th Transportation Company were stationed at Fort Polk, Louisiana, and upon release from active duty and while in convoy en route home, a tragic accident occurred on August 6, 1962, that ended the lives of two (2) young Mississippi soldiers and burned the records of the entire unit; and

"WHEREAS, as a result of that tragic accident, the personnel of the 1065th Transportation Company have been denied the privilege of having accurate medical records for that period of service, as well as veterans' benefits; and

"WHEREAS, the Legislature of the State of Mississippi is desirous of correcting the injustices resulting from the loss of those records; NOW, THEREFORE,

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

"SECTION 1. (1) The Adjutant General of the State of Mississippi immediately after the passage of this act shall take such action as may be necessary to reconstruct reasonably accurate medical records of all those individuals who were members of the 1065th Transportation Company and whose records were destroyed in an accident occurring on August 6, 1962, while the company was in convoy en route back to Mississippi following mobilization during the 'Berlin Crisis.' In reconstructing such records, the Adjutant General shall accept sworn affidavits and statements from persons who were involved in the August 6, 1962, accident, persons who witnessed the accident and persons having actual knowledge of any facts relevant to the accident to the individuals involved in the accident or to the medical records destroyed in the accident.

"(2) The Adjutant General shall give written notice by United States mail to all persons whom he knows or believes to have suffered the loss of medical records in the accident described in subsection (1) of this section. The notice shall inform such persons that they must make application with the Adjutant General if they wish to reconstruct or correct their medical records destroyed in the August 6, 1962, accident, but that the failure of any such person to provide information or documentation of his medical records as they existed before or after August 6, 1962, shall not be construed by the Adjutant General as insufficient evidence of any illness or injury that the person actually suffered from or was treated for during the period of service from October 1, 1961, through August 15, 1962.

"(3) Within forty-five (45) days of receipt of an application from any person under subsection (2) of this section, the Adjutant General shall complete a review of all medical records of such person on file with the Mississippi National Guard. If the Adjutant General, following such review, finds that the medical records of such person are not accurate or do not properly reflect that such person served during the period of October 1, 1961, through August 15, 1962, as evidenced by affidavits, statements and the person's application file in his office, he shall order that the medical records of such person be amended by the appropriate military record agency so as to properly reflect all illnesses and injuries that the person suffered and was treated for during the period of time he served on active duty with the 1065th Transportation Company of the Mississippi Army National Guard.

"(4) Any person whose medical records are reconstructed or amended under subsection (3) of this section shall be entitled to require copies of such records to be provided to any federal or state agency for the purpose of determining if the person qualifies for veterans' benefits.

"SECTION 2. This act shall take effect and be in force from and after its passage."

Cross References — Mississippi Military Family Relief Fund, see § 33-4-1.

When unorganized militia subject to duty, see § 33-5-9.

Ordering out unorganized militia, see § 33-5-11.

Draft of unorganized militia, see § 33-5-13.

Penalty for militia officer refusing to obey orders, see § 97-11-39.

OPINIONS OF THE ATTORNEY GENERAL

There was no conflict between subsection (1) and the regulatory authority given to the State Personnel Board in the Fiscal Year 2001 appropriations bill. Stringer, Jr., July 28, 2000, A.G. Op. #2000-0401.

§ 33-3-13. Seal; form and effect thereof.

The device upon the seal of the Adjutant General shall consist of the coat of arms of the State of Mississippi, and the words "Office of Adjutant General, State of Mississippi," around the margin.

The seal used in the office of the Adjutant General shall be the seal of his office and shall be delivered by him to his successor. Where deemed appropriate orders issued from his office shall be authenticated with such seal and copies, orders, records and papers in his office, duly certified and authenticated under such seal, shall be evidence in all cases in like manner as if the originals were produced.

HISTORY: Codes, 1942, § 8519-17; Laws, 1966, ch. 539, § 8, eff from and after June 1, 1966.

§ 33-3-15. Rules and regulations.

The intent of this code is to conform to all acts and regulations of the United States affecting the same subjects, and all provisions of this code shall be construed to effect this purpose. All acts of the Congress of the United States relating to the control, administration and government of the National Guard, and all rules and regulations adopted by the United States for the government of the National Guard, so far as the same are not inconsistent with the laws of this state and with the rights reserved to this state and guaranteed under the constitution of this state, shall constitute rules and regulations for the government of the militia of this state.

The Adjutant General, with the approval of the Governor, shall have the power, and it shall be his duty from time to time to issue such orders and to prescribe such rules and regulations relating to the organization of the militia or to the National Guard or to the Mississippi State Guard as may be necessary for the proper training and discipline thereof; provided that such orders, rules and regulations are not in conflict with the laws of this state. The Adjutant General, with the approval of the Governor, is expressly authorized to issue such orders, rules and regulations as may be necessary in order that the organization, training and discipline of the components of the militia of this state will at all times conform to the applicable requirements of the United States government relating thereto. Orders, rules and regulations issued hereunder shall have full force and effect as part of the military code of this state. Rules and regulations in force at the time of the passage of this code shall remain in force until new rules and regulations are approved and promulgated.

HISTORY: Codes, 1942, § 8519-18; Laws, 1966, ch. 539, § 9, eff from and after June 1, 1966.

§ 33-3-17. Awards, medals and decorations.

(1) The Governor is hereby authorized and empowered to decorate members and former members of the Mississippi National Guard and members and former members of the National Guard of the several states and members and former members of the Armed Forces of the United States, who he may deem worthy of such decoration, with such awards, medals or decorations as he may prescribe by rules and regulations promulgated by him, and the Governor is hereby authorized to promulgate suitable and reasonable rules and regulations for such purposes.

(2) The Governor shall award posthumously the Mississippi Medal of Valor to those members of the Mississippi National Guard who gave their lives while in active service of the United States as defined in Section 33-1-1(l).

(3) The Governor may award retroactively the Mississippi Medal of Valor to a member or former member of the Armed Forces of the United States if such member has been awarded the Medal of Honor or the Purple Heart.

(4) The design of the Mississippi Medal of Valor is as follows: A gold medal with the Great Seal of the State of Mississippi superimposed on a cross combined with crossed sabers with the words "MEDAL OF VALOR" inscribed around the seal. The medal is suspended from a ribbon of navy blue background, with two (2) wide, vertical white bands. The recipient's name and rank are engraved in the reverse side of the medal. The ribbon carries the same colors as described for the medal.

HISTORY: Codes, 1942, § 8519-19; Laws, 1966, ch. 539, § 10; Laws, 2004, ch. 545, § 9, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (4). The word "FOR" was changed to "OF" so that "MEDAL FOR VALOR" will read as "MEDAL OF VALOR." The Joint Committee ratified the correction at its August 5, 2008, meeting.

CHAPTER 4.

MISSISSIPPI MILITARY FAMILY RELIEF FUND

Sec.
33-4-1. Mississippi Military Family Relief Fund created; money in fund under direction of Military Department; use of funds; eligibility requirements.

§ 33-4-1. Mississippi Military Family Relief Fund created; money in fund under direction of Military Department; use of funds; eligibility requirements.

A special fund to be designated the "Mississippi Military Family Relief Fund" is created in the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. The fund shall consist of any money designated for deposit therein from any source, including, but not limited to, money designated for deposit therein by Section 27-7-94, and private contributions. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund and any interest earned or investment earnings on amounts in the fund shall be deposited into the fund. Money in the fund shall be under the direction of the military department. Such funds shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, based upon recommendations made by the Adjutant General. Money in the fund shall be utilized to make grants to families that experience a financial hardship as a result of a family member who is a member of the Mississippi National Guard or is a Mississippi resident and member of the Reserves of the Armed Forces of the United States. The Adjutant General shall establish eligibility requirements for receipt of the grants and the amount of the grants by rule.

HISTORY: Laws, 2005, 2nd Ex Sess, ch. 6, § 1 effective from and after passage June 14, 2005; Laws, 2007, ch. 447, § 1; Laws, 2012, ch. 436, § 1; Laws, 2015, ch. 334, § 1; Laws, 2017, ch. 328, § 1, eff from and after July 1, 2017.

Cross References — Contribution to Mississippi Military Family Relief Fund from state income tax refund, see § 27-7-92.

CHAPTER 5.

THE MILITIA AND MISSISSIPPI STATE GUARD

The Militia. 33-5-1
Mississippi State Guard. 33-5-51

THE MILITIA

Sec.
33-5-1. Composition of the Militia.
33-5-3. Enrollment of militia.
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33-5-9. Unorganized militia; when subject to duty.
33-5-11. Manner of ordering out unorganized militia.
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33-5-15. Fees.
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§ 33-5-1. Composition of the Militia.

The militia of the State of Mississippi shall consist of all able-bodied citizens of the state between the ages of seventeen (17) and sixty-two (62) years, who are not exempt by law of this state or of the United States, together with all other able-bodied persons who shall voluntarily enlist or accept commission, appointment or assignment to duty therein, subject to such classifications as may be hereinafter prescribed. The militia shall be divided into three (3) classes: The National Guard, the Mississippi State Guard, and the unorganized militia. The unorganized militia shall consist of all persons liable to service in the militia, but not members of the National Guard or the Mississippi State Guard.

A seventeen-year-old person shall not be allowed to enlist or be assigned to duty without the written consent of both parents, if living, or one (1) parent if one (1) is deceased, or if both parents are deceased, the guardian of such person.

HISTORY: Codes, 1942, § 8519-21; Laws, 1966, ch. 539, § 11; Laws, 1973, ch. 310, § 1, eff from and after passage (approved March 2, 1973).

Cross References — Constitutional authority for composition of militia, see Miss. Const. Art. 9, § 214.

Definition of terms used in this chapter, see § 33-1-1.

Retention of prior tenures, enlistments, rights and privileges, see § 33-1-35.

Prior offenses not abolished, see § 33-1-37.

Composition and organization of the Mississippi State Guard, see § 33-5-51.

Provisions of §§ 33-5-1 through 33-5-17 to be used to provide personnel for the Mississippi State Guard, see § 33-5-51.

Composition and organization of the Mississippi National Guard, see § 33-7-1.

JUDICIAL DECISIONS

1. In general.

Minor over age of 18 is bound by enlistment notwithstanding failure to secure parent's consent. Birdsong v. Blackman, 127 Miss. 693, 90 So. 441, 1921 Miss. LEXIS 272 (Miss. 1921).

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense § 25.

Law Reviews.

Separation of Powers at the State Level, Part II: Service in a Civilian Public Office and in the National Guard, 74 Miss. L.J. 47, Fall, 2004.

§ 33-5-3. Enrollment of militia.

Whenever the Governor deems it necessary, he may order an enrollment to be made by officers designated by him of all persons liable to service in the militia of this state. Such enrollment shall include such information as the Governor may require. Three (3) copies thereof shall be made: One (1) copy shall be filed in the office of the circuit clerk of the county in which the enrollment is made, and two (2) copies in the office of the Adjutant General. Enrollment shall be made upon such notice and in such manner as the Governor may direct. Every person required by such notice to enroll who wilfully fails or refuses to do so shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed Twenty-five Dollars ($25.00) or by confinement in jail not to exceed twenty-five days (25), or both.

HISTORY: Codes, 1942, § 8519-22; Laws, 1966, ch. 539, § 12, eff from and after June 1, 1966.

Cross References — Provisions of this section to be used for the purpose of providing personnel for the Mississippi State Guard, see § 33-5-51.

Penalty for unlawful military organization, see § 97-7-61.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense § 3.

§ 33-5-5. Exemption from service in the militia.

The following persons shall be exempt from military service in the militia of this state:

(a) Persons exempt from military service by the laws of the United States;

(b) All regularly or duly ordained ministers of religion and rabbis, installed according to the rules of their sect, and all students preparing for any such ministry in recognized theological or divinity schools;

(c) All state officers; executive, legislative and judicial;

(d) All county, municipal, and district officers;

(e) All persons actually employed as teachers in any established school, college or university;

(f) Such classes of persons, grouped by age and profession or vocation, as the Governor may deem necessary for the maintenance of the civilian population of the state and whose exemption will be compatible with the military needs of the country. The Governor shall make or remove such exemption as he may see fit by general public proclamation.

The above persons exempt from military duty in the militia will not be exempt from enrollment, but at the time of enrollment shall file verified claims for exemption from military service in such form and manner as the Governor may direct.

HISTORY: Codes, 1942, § 8519-23; Laws, 1966, ch. 539, § 13, eff from and after June 1, 1966.

Cross References — Provisions of this section to be used for the purpose of providing personnel for the Mississippi State Guard, see § 33-5-51.

Federal Aspects— Deferments and exemptions from training and service, see 50 USCS § 3806.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense §§ 98 et seq.

§ 33-5-7. Appointment of boards to determine exemptions.

The Governor shall appoint boards vested with the authority and power of passing upon and determining the claims of exemption filed under Section 33-5-5. An appeal to the Governor may be taken from the decision of the boards of the state by any person interested in the matter, within the time prescribed by regulation promulgated by the Governor.

HISTORY: Codes, 1942, § 8519-24; Laws, 1966, ch. 539, § 14, eff from and after June 1, 1966.

Cross References — Provisions of this section to be used for the purpose of providing personnel for the Mississippi State Guard, see § 33-5-51.

§ 33-5-9. Unorganized militia; when subject to duty.

The unorganized militia, or any part thereof, shall not be subject to any active military duty, except when called into the service of the United States or when called into the service of this state by the Governor in case of war, rebellion, insurrections, invasion, tumult, riot, breach of the peace, public calamity or catastrophe or other state or national emergency or imminent danger thereof. When the militia of this state, or any part thereof, is called forth under the constitution and laws of the United States, the Governor shall first order out for service the National Guard, and then the Mississippi State Guard, or such parts thereof as may be necessary, and if the number available be insufficient, he shall then order out such part of the unorganized militia as he may deem that the necessity requires.

HISTORY: Codes, 1942, § 8519-25; Laws, 1966, ch. 539, § 15, eff from and after June 1, 1966.

Cross References — Definition of term "insurrection," see § 1-3-23.

Provisions of this section to be used for the purpose of providing personnel for the Mississippi State Guard, see § 33-5-51.

Ordering organized militia into active state duty, see § 33-7-301.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense § 3.

Law Reviews.

Separation of Powers at the State Level, Part II: Service in a Civilian Public Office and in the National Guard, 74 Miss. L.J. 47, Fall, 2004.

§ 33-5-11. Manner of ordering out unorganized militia.

The Governor, when ordering out the unorganized militia, shall designate the number and classes to be called. He may order them out either by calling for volunteers or by draft. He may attach them to the several organizations of the National Guard or the Mississippi State Guard, as may be best for the service, provided that no additional organization or unit shall be created from the unorganized militia until the units of the National Guard are brought to their full authorized strength. During the absence of organizations of the National Guard in the service of the United States, their state designations shall not be given to new organizations.

HISTORY: Codes, 1942, § 8519-26; Laws, 1966, ch. 539, § 16, eff from and after June 1, 1966.

Cross References — Provisions of this section to be used for the purpose of providing personnel for the Mississippi State Guard, see § 33-5-51.

Manner of ordering out organized militia, see § 33-7-301.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense § 3.

§ 33-5-13. Draft of unorganized militia.

If the unorganized militia is ordered out by draft, the Governor may appoint the number by draft according to the population of the several counties of the state, or otherwise, and shall notify the sheriff of each county, from which any draft is so required, of the number of persons his county is to furnish. Upon the requisition of the Governor being received by the sheriff, the sheriff shall immediately notify the clerk of the circuit court of the county, or in the absence of the said clerk or his inability to act, then his legally authorized deputy or deputies, who shall repair to the office of said clerk and in public copy from the most recent enrollment those persons liable for service under such draft of the unorganized militia, by name or number, the persons shown thereon. Such names or their corresponding numbers shall be placed on slips of paper of the same size and appearance, as nearly as practicable, which slips shall be placed in a box suitable for the purpose and the number required to fill such draft drawn therefrom by the clerk or his legally authorized deputy. The sheriff shall serve upon the persons so drafted a written order from the Governor specifying at what time and at what place they shall appear and report to the officer specified by the Governor. The sheriff shall make return to the clerk of all persons drawn who could not be found, and the clerk shall then draw as many additional names as may be required to complete the draft or to replace those, who, having been drawn, have been rejected by the military authorities for disability, and continue in like manner until the draft is completed and accepted by the military authorities. The Governor may prescribe rules and regulations for conducting the draft and may designate additional officers to assist the respective clerks and sheriffs conducting the same.

HISTORY: Codes, 1942, § 8519-27; Laws, 1966, ch. 539, § 17, eff from and after June 1, 1966.

Cross References — Provisions of this section to be used for the purpose of providing personnel for the Mississippi State Guard, see § 33-5-51.

§ 33-5-15. Fees.

As compensation for services rendered under this chapter, circuit clerks shall receive Two Cents (2¢) for each name placed in the box and sheriffs shall receive Fifty Cents (50¢) for each person notified. Such fees shall be paid by warrant of the state auditor on requisitions approved by the Adjutant General.

HISTORY: Codes, 1942, § 8519-28; Laws, 1966, ch. 539, § 18, eff from and after June 1, 1966.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Provisions of this section to be used for the purpose of providing personnel for the Mississippi State Guard, see § 33-5-51.

§ 33-5-17. Punishment for failure to appear.

Every member of the militia ordered out for duty, or who shall volunteer or be drafted, who does not appear at the time or place ordered, or who shall knowingly or wilfully evade the process of the sheriff or other authorized officer to avoid military duty shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment not exceeding six (6) months, or both.

HISTORY: Codes, 1942, § 8519-29; Laws, 1966, ch. 539, § 19, eff from and after June 1, 1966.

Cross References — Provisions of this section to be used for the purpose of providing personnel for the Mississippi State Guard, see § 33-5-51.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

MISSISSIPPI STATE GUARD

Sec.
33-5-51. Organization of the State Guard.
33-5-53. Equipping State Guard.

§ 33-5-51. Organization of the State Guard.

The Governor is hereby authorized to organize, equip, train and maintain, in such strength and in such organized branches of the service as he may deem advisable, a military force similar to the National Guard and organized for the same purposes, to be known as the Mississippi State Guard, to be utilized in aid to or in lieu of the Mississippi National Guard upon its mobilization. The Governor may accept volunteers for the Mississippi State Guard in accordance with regulations promulgated by him and may use the provisions of Sections 33-5-1 through 33-5-17, Mississippi Code of 1972, for the purpose of providing personnel for such Mississippi State Guard. No person under the age of sixteen (16) years shall be eligible for service in the Mississippi State Guard. No person shall by reason of membership therein be exempt from military service under any federal law. The Mississippi State Guard shall be governed by the same laws and regulations so far as applicable, and shall be entitled to the same privileges, immunities and allowances, as may be now or hereafter provided for the Mississippi National Guard. When requested by the Adjutant General, the Legislature may appropriate funds for the support and operation of the Mississippi State Guard. If authorized by the federal laws such state guard shall be organized, maintained and trained under the provisions of any laws of the United States now or hereafter enacted for the organization, training and maintenance of state forces other than those of the National Guard.

HISTORY: Codes, 1942, § 8519-141; Laws, 1966, ch. 539, § 92; Laws, 1989, ch. 473, § 2, eff from and after July 1, 1989.

Cross References — Organization and composition of the militia, see § 33-5-1.
Organization and composition of the Mississippi National Guard, see § 33-7-1.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 28.

Law Reviews.
Separation of Powers at the State Level, Part II: Service in a Civilian Public Office and in the National Guard, 74 Miss. L.J. 47, Fall, 2004.

§ 33-5-53. Equipping State Guard.

For the use of such State Guard, the Governor is hereby authorized to requisition from the department of defense of the United States such arms and equipment as may be in the possession of and can be spared by the department of defense. The Governor may make available to the Mississippi State Guard the facilities of state armories, their equipment, and such other public facilities and property as may be available and reasonably necessary for the maintenance of such Mississippi State Guard.

HISTORY: Codes, 1942, § 8519-142; Laws, 1966, ch. 539, § 93, eff from and after June 1, 1966.

CHAPTER 7.

NATIONAL GUARD

Article 1. Organization, Training and Discipline. 33-7-1
Article 3. Commissioned Officers. 33-7-101
Article 5. Enlisted Personnel. 33-7-201
Article 7. Active State Duty. 33-7-301
Article 9. Educational Assistance. 33-7-401
Article 11. National Guard Mutual Assistance Counter-Drug Activities Compact. 33-7-501

ARTICLE 1.

ORGANIZATION, TRAINING AND DISCIPLINE.

Sec.
33-7-1. Composition and organization of the Mississippi National Guard.
33-7-3. Training and discipline.
33-7-5. Efficiency of troops; officers responsible for.
33-7-7. Governor may order troops beyond borders of state for instruction.
33-7-9. Field training under command of officers of other states.
33-7-11. Oaths.
33-7-13. The uniform.
33-7-15. Unauthorized wearing of uniform and insignia.
33-7-17. Arms and equipment.
33-7-19. Penalty for loss, destruction or retention of military property.
33-7-21. Federal pay for National Guard.
33-7-23. Compensation for inspections and other duties.
33-7-25. Commanding officer may fix limits to military jurisdiction.
33-7-27. Continuance in National Guard after federal service.
33-7-29. Colors and flag to be furnished.

§ 33-7-1. Composition and organization of the Mississippi National Guard.

(a) The Mississippi National Guard shall consist of the organized militia within the ages prescribed by federal law and regulations, organized, armed and equipped as hereinafter provided, and of commissioned officers and warrant officers within the ages and having the qualifications prescribed by federal law and regulations. The number of officers and enlisted men of the National Guard and the grades and designations thereof shall be as now or hereafter prescribed by federal law and regulations relating to the National Guard, and all commissions and promotions shall be in accordance with the aforesaid regulations.

(b) The Mississippi National Guard shall be divided into such organizations and units as may now or hereafter be prescribed for this state by federal law or regulations, consisting of that portion of the National Guard of the United States apportioned and assigned to this state in accordance with tables of organizations prescribed by the department of defense and approved by the Governor of Mississippi.

(c) The Governor shall have power to increase the National Guard by voluntary enlistment or by draft, and to organize the same, with proper officers, as the necessities of the service may require, in the manner provided for in Sections 33-5-1 through 33-5-17 of Chapter 5 of this title, in periods of national or state emergency as therein provided for.

HISTORY: Codes, 1942, § 8519-31; Laws, 1966, ch. 539, § 20, eff from and after June 1, 1966.

Cross References — Exemption of armories and other installations of the National Guard from provisions as to opening and staffing of state offices, see § 25-1-98.

Definition of terms used in this chapter, see § 33-1-1.

Retention of prior tenures, enlistments, rights and privileges, see § 33-1-35.

Prior offenses not abolished, see § 33-1-37.

Organization and composition of the militia, see § 33-5-1.

Organization and composition of the Mississippi State Guard, see § 33-5-51.

OPINIONS OF THE ATTORNEY GENERAL

Employees who work on a Saturday or Sunday may not receive compensatory time or compensatory pay regardless of the fact that the day is an "actual holiday." These employees should receive ordinary pay for work performed on an "actual holiday." Compensatory time or compensatory pay may be given for work performed on a "legal holiday," as long as there exists a policy providing for such at the time the work was performed. Hammack, Jan. 23, 2004, A.G. Op. 02-0605.

RESEARCH REFERENCES

ALR.

Official immunity of state National Guard members. 52 A.L.R.4th 1095.

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense §§ 3, 28-30.

§ 33-7-3. Training and discipline.

Every unit of the Mississippi National Guard and the individual members thereof shall, unless excused by proper authority, participate in such field training, armory drills, training assemblies, inspections, musters, ceremonies, parades and other military training or military duty as may be prescribed by the laws and regulations of the United States relating to the National Guard or prescribed by the laws of this state or by the order of the Governor. The discipline of the National Guard shall conform to the system of discipline which is now or may hereafter be prescribed by the United States government for the National Guard, or where applicable for the active Armed Forces of the United States, and the training shall be conducted so as to conform to the applicable regulations of the United States governing training of the National Guard. Any officer, warrant officer or enlisted man who shall fail to report for or participate in or perform any such training, drill, assembly, inspection, muster, ceremony, parade or other military duty, after having first been ordered by his superior officer so to do and not having been excused therefrom by proper authority, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed Five Hundred Dollars

($500.00) or by imprisonment not to exceed thirty (30) days, or by both fine and imprisonment. For purposes of this section, a person shall be deemed to have been ordered to report for, participate in and perform military training or military duty if the same has been scheduled and notice thereof given to members of the unit in the manner prescribed by applicable regulations and customs of the service. Any member of the National Guard shall have an opportunity to explain any mitigating circumstances which may have caused an unauthorized absence under this section.

HISTORY: Codes, 1942, § 8519-33; Laws, 1966, ch. 539, § 22; Laws, 1989, ch. 473, § 3, eff from and after July 1, 1989.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Construction and Application of 37 U.S.C. § 206, Providing Compensation for Military Reserves and Members of National Guard with Respect to Inactive-Duty Training. 73 A.L.R. Fed. 2d 27.

§ 33-7-5. Efficiency of troops; officers responsible for.

The commander in chief of the organized militia of this state may cause those officers under his command to perform any military duty, and they shall be responsible to the Governor for the general efficiency of the organized militia and for the inspection, training, instruction, military proficiency, and care of the troops. The commanding officers of organizations shall be responsible to their immediate commanders for the condition of the equipment, drill, instruction, and efficiency of their respective commands. All commissioned officers, and warrant officers, and enlisted men shall be responsible to their immediate commanding officers for prompt and unhesitating obedience, proper drill, and the preservation and proper use of the property of the United States, state, organization and other public property in their possession.

HISTORY: Codes, 1942, § 8519-34; Laws, 1966, ch. 539, § 23, eff from and after June 1, 1966.

§ 33-7-7. Governor may order troops beyond borders of state for instruction.

The commander in chief is authorized to order out the Mississippi National Guard, or any part thereof, for training or service beyond the borders of the state, with any part of the Armed Forces of the United States, whenever participation in such training or serving is authorized by the secretary of defense, or to repel invasion. Whenever the Mississippi National Guard, or any part thereof, not being in the service of the United States, goes beyond the limits of the state, they shall still remain under the military laws and regulations of the state, and any military court of the state shall have jurisdiction over any offense against the military laws of the state committed by any member of the Mississippi National Guard while performing any such military duty beyond the limits of the state, whether such court be organized and sit in the state or not.

HISTORY: Codes, 1942, § 8519-35; Laws, 1966, ch. 539, § 24, eff from and after June 1, 1966.

§ 33-7-9. Field training under command of officers of other states.

For the purpose of coordinating and making more effective the field and similar classes of instruction and training in organizations of the National Guard jointly maintained by Mississippi and any other state or states during periods of field or similar training, as provided under the National Defense Act, the units and personnel of the Mississippi National Guard may, if authorized by the federal government, be placed under the supervision and command of higher organization commanders, who are now or may hereafter be appointed from other states, and whose appointments have the approval of this state, and the states concerned, and such officer is federally recognized. This requirement shall not be carried out unless and until the state or states jointly interested in a National Guard organization with Mississippi shall have enacted a similar law. The objects of this section may be carried out with the consent of the Governor, without regard to similar laws enacted by other states, with the advice and approval of the ranking officer of the Mississippi National Guard present at the place of training and instruction and in command of the Mississippi troops concerned. For the purpose of fixing the time limits of the periods mentioned in this section, the periods of training shall begin when units have cleared their armories or bases and are en route to training assembly areas and shall end when units have returned to their armories or bases from field training period. Mississippi troops shall not be required to yield authority and supervision of matters concerning transportation in or out of the camp or other military area, finance, and supply which concern Mississippi only in her relations with the federal government and for which the state is directly responsible to the federal government. The commanding officer appointed from another state, and such other officers of his command as he may designate, who are members of organizations in which Mississippi has joint interest in other states, and who are appointed and recognized in accordance with laws, rules and regulations prescribed by the federal government may, with the approval of the Governor, make tours of inspection and policy visits with the units of their organizations of the National Guard of Mississippi at their home stations or at other places, at such times as are mutually agreeable, it being understood that the state is not responsible or liable for any expenses incident to such visits.

HISTORY: Codes, 1942, § 8519-36; Laws, 1966, ch. 539, § 25, eff from and after June 1, 1966.

§ 33-7-11. Oaths.

Those who are appointed, commissioned, warranted, or enlisted or drafted in the active militia or state military forces shall take and subscribe an oath as prescribed in appropriate laws and regulations governing the Armed Forces of the United States and the military forces of the State of Mississippi.

HISTORY: Codes, 1942, § 8519-37; Laws, 1966, ch. 539, § 26, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense § 7.

§ 33-7-13. The uniform.

The uniform of the Mississippi National Guard shall be the same as that prescribed for the Armed Forces of the United States, except that the commander in chief may authorize the use of other distinctive insignia.

HISTORY: Codes, 1942, § 8519-38; Laws, 1966, ch. 539, § 27, eff from and after June 1, 1966.

Cross References — Penalty for loss, destruction or retention of uniform see § 33-7-19.

OPINIONS OF THE ATTORNEY GENERAL

A county tourism commission may continue to pay the salaries of staff employees, from the commission's room tax revenues, while those employees are temporarily reassigned to assist with disaster recovery in the wake of Hurricane Katrina. Keating, Jan. 13, 2006, A.G. Op. 05-0620.

§ 33-7-15. Unauthorized wearing of uniform and insignia.

It shall be unlawful for any person not a member of the Mississippi National Guard or the organized militia to wear any distinctive part of the uniform or insignia of the Mississippi National Guard or the organized militia. Any person who offends against this section shall, on conviction, be punished by a fine of not less than Ten Dollars ($10.00), and not more than One Hundred Dollars ($100.00), or by imprisonment in the county jail not to exceed three (3) months, or by both fine and imprisonment. However, the prohibition of this section shall not apply to members of the armed forces on extended active duty or to members of the various reserve components of the armed forces.

HISTORY: Codes, 1942, § 8519-39; Laws, 1966, ch. 539, § 28, eff from and after June 1, 1966.

§ 33-7-17. Arms and equipment.

All officers and men of the Mississippi National Guard shall be furnished with such arms and equipment as are prescribed by the federal government for the proper performance of their military duty. These supplies and such equipage as may be necessary for the proper equipment of all organizations will be issued, under such regulations as the commander in chief may prescribe, upon approved requisitions.

Every officer and enlisted man shall be responsible for the care, safekeeping, and return of any uniform, arms or any other military property delivered to him for his use. He shall use the same for military purposes only, and upon receiving a discharge or otherwise leaving the military service, or upon the demand of his commanding officer, or other military authority, shall forthwith deliver such uniform, arm, or other military property to an officer competent to receive same, the property so turned in to be in good order, reasonable use and ordinary wear thereof excepted. Any person violating the provisions of this section will be guilty of a misdemeanor, and upon conviction before any court of competent jurisdiction, shall be punished by a fine not exceeding Two Hundred Dollars ($200.00) or by imprisonment in the county jail not to exceed six (6) months, or both such fine and imprisonment, or he may be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8519-40; Laws, 1966, ch. 539, § 29, eff from and after June 1, 1966.

Cross References — Penalty for loss, destruction or retention of military property, see § 33-7-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense § 9.

§ 33-7-19. Penalty for loss, destruction or retention of military property.

Every person who shall wantonly, carelessly, intentionally or through neglect, lose, injure or destroy, or permit the loss, injury or destruction of any uniform, part of uniform, arm, equipment or other article of military property issued by the United States or State of Mississippi for military purposes, or the property of any organization of the Mississippi National Guard, and refuse or fail to make good such loss, or who shall sell or dispose of, remove or secrete the same with the intent to sell or dispose thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof before a court of competent jurisdiction, shall be punished by a fine of not exceeding Two Hundred Dollars

($200.00), or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment, at the discretion of the court.

Whosoever wrongfully purchases, retains, or who has in his possession any arm, accouterment, article of uniform, tool, implement, or any other military property, the property of the United States, the State of Mississippi or of any organization of the Mississippi National Guard, shall be guilty of a misdemeanor, and upon conviction thereof before a court of competent jurisdiction shall be fined not exceeding Two Hundred Dollars ($200.00), or imprisoned not exceeding six months (6), or both, at the discretion of the court.

HISTORY: Codes, 1942, § 8519-41; Laws, 1966, ch. 539, § 30, eff from and after June 1, 1966.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 10.

§ 33-7-21. Federal pay for National Guard.

Whenever the Mississippi National Guard, or any part thereof, attends field training, armory drills, training assemblies, or other military training or military duty for which federal funds are available, they shall receive such pay and allowances as may be allowed them by the federal government to be paid out of federal funds appropriated for the use of the Mississippi National Guard.

HISTORY: Codes, 1942, § 8519-42; Laws, 1966, ch. 539, § 31, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 145 et seq.

§ 33-7-23. Compensation for inspections and other duties.

The Adjutant General may order any officer or enlisted man of the Mississippi National Guard to make inspections, or perform any other military activity connected with the administration of the Mississippi National Guard. When any such officer or enlisted man shall be called upon to perform such inspection or military activity he shall receive such pay as is provided for active state duty and mileage and other allowances as provided in Section 25-3-41 of the Mississippi Code of 1972.

HISTORY: Codes, 1942, § 8519-43; Laws, 1966, ch. 539, § 32, eff from and after June 1, 1966.

Cross References — Allowance for traveling expenses, see § 25-3-41.
Amount of pay for active state duty, see § 33-7-313.

§ 33-7-25. Commanding officer may fix limits to military jurisdiction.

Any commanding officer, when on duty, may fix the necessary limits or bounds to his unit's parade, armory building, camp, base, post or area. No person shall enter such limits without leave, and said commanding officer at any parade, camp, base, post, or area may refuse to any person entrance to any such military installation, area, or building in which troops may be quartered, or military equipment stored, whenever, in his judgment, the exigencies of the service make it expedient to do so. Whoever intrudes within the limits of any such parade, camp, base, area, armory or building in which troops are quartered, after being forbidden entrance therein, may be ejected forcibly if necessary, or may be confined under guard as provided for in Section 33-1-11. Whoever resists a sentry or any authorized member of the Mississippi National Guard endeavoring to exclude them from such limits or building, or who resists arrest by the military authorities within such limits or building shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not less than Ten Dollars ($10.00) and not more than One Hundred Dollars ($100.00), or by imprisonment not to exceed sixty (60) days, or by both fine and imprisonment.

HISTORY: Codes, 1942, § 8519-44; Laws, 1966, ch. 539, § 33, eff from and after June 1, 1966.

Cross References — Confinement under guard, see § 33-1-11.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 249, 251.

§ 33-7-27. Continuance in National Guard after federal service.

Upon the termination of any emergency for which the Mississippi National Guard has been drafted into the military service of the United States, all enlisted men so drafted, upon being discharged from the Armed Forces of the United States shall continue to serve in the Mississippi National Guard until the dates upon which their enlistments prior to their draft, would have expired, if uninterrupted. The commissioned and warranted officers so drafted shall resume their commissions and warrants in the Mississippi National Guard in the respective grades held by them when drafted, or in any higher grade which they may have attained while in such service, if appointed thereto by the Governor to fill existing vacancies.

HISTORY: Codes, 1942, § 8519-45; Laws, 1966, ch. 539, § 34, eff from and after June 1, 1966.

§ 33-7-29. Colors and flag to be furnished.

Each unit of the Mississippi National Guard which has a comparable unit in the Armed Forces of the United States to which is furnished the national colors and a unit flag shall be furnished by the Adjutant General with the national colors and the unit flag.

HISTORY: Codes, 1942, § 8519-46; Laws, 1966, ch. 539, § 35, eff from and after June 1, 1966.

ARTICLE 3.

COMMISSIONED OFFICERS.

Sec.
33-7-101. Commissioned officers—how appointed.
33-7-103. Terms of office.
33-7-105. Oath of officer.
33-7-107. Examinations required for commission.
33-7-109. Assignment and transfer of officers.
33-7-111. Dismissal of officers.
33-7-113. Rank list of officers.
33-7-115. Senior officer on duty in command.
33-7-117. Reserve list.
33-7-119. Retired list.
33-7-121. Officers supply own uniforms.

§ 33-7-101. Commissioned officers—how appointed.

The Governor as Commander in Chief shall appoint and commission, or warrant, all officers of the Mississippi National Guard other than noncommissioned officers.

HISTORY: Codes, 1942, § 8519-51; Laws, 1966, ch. 539, § 36, eff from and after June 1, 1966.

Cross References — Constitutional authority for governor's appointment of militia officers, see Miss. Const. Art. 9, §§ 216 through 219.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense §§ 36, 41.

§ 33-7-103. Terms of office.

All officers of the Mississippi National Guard, except the Adjutant General, shall hold office until retired for age or disability, be honorably discharged at their own request, or be dismissed pursuant to a sentence of a general court-martial. The Governor may, however, at his discretion, refuse to accept the resignation of an officer. If an organization of the Mississippi National Guard be disbanded or mustered out of the service, such officers of said organization shall be put on the reserve list, subject to the further needs of the National Guard. If any officer of the Mississippi National Guard leaves the jurisdiction of the state and leaves his company or organization station for such a length of time that he ceases to exercise the functions of his commission or warrant so as to cease to be an officer in fact, his action will be deemed to have the effect of a resignation, and his commission may be terminated by the Governor. However, the Governor shall have the power to grant an officer a leave of absence for any reasonable length of time without prejudice to his commission or warrant.

HISTORY: Codes, 1942, § 8519-52; Laws, 1966, ch. 539, § 37, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense §§ 40, 41.

§ 33-7-105. Oath of officer.

Every officer commissioned or warranted in the Mississippi National Guard shall, before entering upon his duties, take and subscribe to the following oath, which oath, signed by him and witnessed by an officer of the Mississippi National Guard, will be filed in the office of the Adjutant General, and all officers of the Mississippi National Guard are hereby empowered to administer this oath:

"I, ________, do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of Mississippi against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Governor of the State of Mississippi; that I make this obligation freely, without any mental reservation or purpose of evasion; that I will well and faithfully discharge the duties of the office of ________ in the National Guard of the United States and of the State of Mississippi upon which I am about to enter, so help me God."

HISTORY: Codes, 1942, § 8519-53; Laws, 1966, ch. 539, § 38, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 37.

§ 33-7-107. Examinations required for commission.

Every person commissioned as an officer in the Mississippi National Guard shall, unless otherwise specifically provided by law, be examined as to his qualifications for office, and no person shall be appointed until he has passed a satisfactory examination as to his capacity, general qualifications and knowledge of military affairs proportionate to the requirements of the office to which he has been selected. The Commander in Chief may appoint examining boards to conduct such examinations, and when any candidate for commission shall fail to appear before a board, as directed, he shall be considered to have failed to qualify and the commission will not issue. The Commander in Chief may also convene examining boards to determine the fitness of officers for promotion and no officer will be promoted who has not passed a suitable examination as to his capacity, general qualifications and knowledge of military affairs proportionate to the requirements of the grade to which he is promoted. The Adjutant General shall prescribe in orders the subjects to be covered by, and the degree of proficiency to be required in each subject in examinations for commissions and promotions, for each grade, and the Governor shall make and cause to be published in orders, regulations governing the promotion of officers.

HISTORY: Codes, 1942, § 8519-54; Laws, 1966, ch. 539, § 39, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense §§ 36, 37, and 43.

§ 33-7-109. Assignment and transfer of officers.

Officers of all grades will be assigned to units or arms of the service and will be transferred from one unit or arm of the service to another by order of the commander in chief as the interest of the service may require; and all appointments will be by commission or warrant in the Mississippi National Guard, and not in any particular unit, and all commissions and warrants now in effect will be considered as such.

HISTORY: Codes, 1942, § 8519-55; Laws, 1966, ch. 539, § 40, eff from and after June 1, 1966.

§ 33-7-111. Dismissal of officers.

(a) No officer of the National Guard shall be dismissed unless by reason of resignation, approval of findings of an efficiency or medical examining board, withdrawal of federal recognition, the sentence of a court-martial, or for cause as provided in sub-section (d) of this section.

(b) The efficiency, moral character, competency, ability to properly perform his duty and general fitness for retention in the National Guard of any officer may be investigated and determined by an efficiency examining board.

(c) The physical fitness for further service of any officer of the National Guard may be investigated by a medical examining board of officers.

(d) Efficiency and medical examining boards consisting of three (3) or more officers shall be appointed by the Adjutant General upon recommendation of the commanding officer or the officer under investigation. All members of such boards shall be senior in grade to the officer under investigation, unless unavailable. Such boards shall be vested with the powers of courts of inquiry. Any officer ordered to appear before such a board shall be allowed to appear in person or by counsel, to cross-examine and to call witnesses in his behalf. He shall, at all stages of the proceedings, be allowed full access to records pertinent to his case and be furnished copies of the same. If the officer shall fail to appear at the time and place set for the hearing by the board, the board shall proceed to consider the evidence presented to it and make such findings as shall be warranted. If the findings of the board are unfavorable to an officer and are approved by the Governor, the Governor shall dismiss the officer, transfer him to the state retired list, or make such other order as may be appropriate.

(e) Any officer who permanently moves from the state or who is absent without leave from drill, training and other duty for such a length of time that he ceases to exercise the function of his commission or warrant, or whose federal recognition is withdrawn may be dismissed automatically.

(f) In any case in which the Adjutant General shall have grounds to believe an officer unfit, incompetent, or incapable of performing his duties, he may be dismissed or transferred to the reserve list or honorary National Guard, if appropriate, without reference to an efficiency or medical examining board, unless the officer so dismissed or transferred shall, within thirty (30) days after being notified thereof, serve upon the Adjutant General notice in writing demanding a hearing and examination before an appropriate board.

HISTORY: Codes, 1942, § 8519-56; Laws, 1966, ch. 539, § 41, eff from and after June 1, 1966.

Cross References — Dismissal of officer for refusing to obey orders, see § 97-11-39.

JUDICIAL DECISIONS

1. In general.

Adjutant General of Mississippi Air National Guard is not prohibited by Mississippi Constitution from appointing state senator to position of major general; however, senator may be prohibited from accepting appointment. Roberts v. Troutt, 475 So. 2d 421, 1985 Miss. LEXIS 2143 (Miss. 1985).

Adjutant General of Mississippi Air National Guard may dismiss major general when adjutant general has issued orders placing major general in excess status, and that authority has been recognized by United States Air National Guard, thereby effectively withdrawing federal recognition of major general; major general's unilateral expectation of being retained in position creates no due process property right in position. Roberts v. Troutt, 475 So. 2d 421, 1985 Miss. LEXIS 2143 (Miss. 1985).

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 41.

§ 33-7-113. Rank list of officers.

The Adjutant General shall publish annually a relative rank list of all officers in the Mississippi National Guard. Commissions or warrants of officers shall bear date of actual appointment by the Governor. Officers of each grade shall rank and take precedence according to the date of federal recognition of their respective commissions or warrants, and when two or more of the same grade are of the same date, their rank and precedence shall be determined by the length of service, continuous or otherwise, in the Mississippi National Guard or in the Armed Forces of the United States; and if for equal service, then by age, the older being the senior, provided, that an officer will not be credited with time spent on the state reserve or retired list in determining his lineal rank in the active list.

HISTORY: Codes, 1942, § 8519-57; Laws, 1966, ch. 539, § 42, eff from and after June 1, 1966.

Cross References — Reserve list, see §§ 33-7-117.
Retired list, see § 33-7-119.

§ 33-7-115. Senior officer on duty in command.

If different organizations of the National Guard of this state join in or do any state duty together, the highest ranking commissioned line or rated officer there on duty or in quarters shall command the whole and give orders for what is needful in the service unless otherwise specially directed by the Governor, according to the nature of the case.

HISTORY: Codes, 1942, § 8519-58; Laws, 1966, ch. 539, § 43, eff from and after June 1, 1966.

§ 33-7-117. Reserve list.

Commissioned officers or warrant officers who are surplus by reduction or disbandment of organization, by being relieved from duty or command, or by any other manner, shall be withdrawn from active service and placed on the state reserve list.

State reserve officers shall be subject to military law and to the jurisdiction of military courts in the same manner as officers on the active list.

HISTORY: Codes, 1942, § 8519-59; Laws, 1966, ch. 539, § 44, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 34.

§ 33-7-119. Retired list.

(1) There shall be a retired list of officers and enlisted men who have served with honor or distinction on the active list of the Mississippi National Guard, and all officers and enlisted men placed on the retired list shall remain thereon unless returned to the active list by the Governor or dismissed by a sentence of a court-martial. No officer or man on the retired list shall be required to perform any military duty whatsoever, but the Governor may, with their consent, detail officers and men on the retired list for recruiting duty, for duty on courts-martial, or for such other duty as they may be qualified. Officers and men on the retired list will be entitled to wear uniforms of their grade, and they shall be amenable to military laws and regulations and may be tried by courts-martial for military offenses as if on the active list.

(2) Federally recognized officers and enlisted men of the National Guard of Mississippi shall be retired by order of the commander in chief with a promotion of one (1) grade, effective the date of retirement by action of the Adjutant General, upon receipt of the recommendation of the commanding officer of such retiring officer or enlisted man and upon completion of twenty (20) or more years of honorable service in the National Guard of Mississippi, the Armed Forces of the United States, or reserve components thereof, provided that any such officer or enlisted man shall be retired in the highest grade held, without promotion, unless the last sixty (60) months of such service was in a federally recognized status in the Mississippi National Guard or on active duty with the Armed Forces of the United States. Any warrant officer holding the grade of highest chief warrant officer shall, upon retirement, be retired in that grade. Any enlisted man holding the highest authorized enlisted grade shall, upon retirement, be retired in that grade.

(3) Whenever any officer or enlisted man shall have reached the age of sixty-four (64), he shall be placed on the retired list.

(4) When any officer or enlisted man becomes permanently disabled or is physically disqualified for the performance of military duty by reason of wounds, injuries or illness, he may, upon his own application or in the discretion of the commander in chief, be ordered before a retiring board for examination as to his physical fitness for military service and, upon the recommendation of such board, may be placed upon the retired list. However, no officer or enlisted man shall be so placed upon the retired list because of physical disabilities which are the result of intemperance or improper habits or conduct upon his part.

For the purposes indicated under the preceding paragraph of this subsection (4), the Commander in Chief may appoint retiring boards, which shall be constituted and have cognizance of the same subjects and possess like powers as similar boards organized under the laws of the Armed Forces of the United States. The proceedings of retiring boards shall be assimilated to the forms and mode of procedure prescribed for like boards under the regulations for the Armed Forces of the United States.

(5) A place on the retired list being a distinction given only in recognition of long and meritorious service, no officer or enlisted man will ever be retired whose service has not been honest and faithful. No officer or soldier will be retired as a means of punishment.

(6) An officer upon the retired list who accepts a commission or warrant in the active militia or in the organized reserves of any component of the Armed Forces of the United States may, at any time, upon his own application, be placed upon the retired list with the rank with which he formerly retired. However, if his latest service in the active militia or in the organized reserves of any component of the Armed Forces of the United States was in a grade higher than that with which he was originally retired, he may be given such higher grade. An officer who has been retired with the increased rank under this article will not be returned to the active list with his increased rank, but with the same rank held on the active list at the time of retirement.

HISTORY: Codes, 1942, § 8519-60; Laws, 1966, ch. 539, § 45; Laws, 1993, ch. 381, § 1, eff from and after passage (approved March 15, 1993).

Joint Legislative Committee— Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the second paragraph of (4) by substituting "paragraph of this subsection (4)" for "paragraph of this section." The Joint Committee ratified the correction at its October 19, 2020, meeting.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense § 34.

§ 33-7-121. Officers supply own uniforms.

All commissioned officers will provide themselves with such uniforms as may be prescribed for their use.

HISTORY: Codes, 1942, § 8519-61; Laws, 1966, ch. 539, § 46, eff from and after June 1, 1966.

ARTICLE 5.

ENLISTED PERSONNEL.

Sec.
33-7-201. Enlistment period of service, transfer, discharge, and extensions of enlistment.
33-7-203. Contract and oath of enlistment.
33-7-205. Discharge of enlisted men.

Sec.
33-7-207. Promotion and administrative reduction of enlisted men.
33-7-209. Uniform of enlisted men.

§ 33-7-201. Enlistment period of service, transfer, discharge, and extensions of enlistment.

(a) The qualifications for enlistment and re-enlistment, the periods of enlistment, re-enlistment and voluntary extension of enlistment, the period of service, the form of oath to be taken, and the manner and form of transfer and discharge of enlisted personnel of the forces of the organized militia shall be those prescribed by applicable laws of the United States and by this chapter and by regulations issued thereunder.

(b) The Governor is authorized to extend the period of any enlistment, re-enlistment, voluntary extension of enlistment, and the period of service of enlisted personnel of the organized militia for a period not to exceed six (6) months after the termination of an emergency declared by him, the legislature or congress.

(c) Whenever the period of enlistment, re-enlistment, voluntary extension of enlistment and the period of service of enlisted personnel of the reserve components of the Armed Forces of the United States are extended, the Governor shall extend the period of any enlistment, re-enlistment, voluntary extension of enlistment and the period of service of enlisted personnel in the corresponding force of the organized militia for the same period.

HISTORY: Codes, 1942, § 8519-71; Laws, 1966, ch. 539, § 47, eff from and after June 1, 1966.

RESEARCH REFERENCES

ALR.

Enlistment or re-enlistment in branches of United States Armed Forces as protected by Federal Constitution or by federal statute. 64 A.L.R. Fed. 489.

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense §§ 55-57, 62, 63.

17A Am. Jur. Pl & Pr Forms (Rev), Military; Civil Defense, Form 6 (petition in federal court — for writ of habeas corpus — for release of minor — enlistee).

§ 33-7-203. Contract and oath of enlistment.

Every person who enlists or reenlists in any force of the organized militia shall sign an enlistment contract and shall take and subscribe such oath or affirmation of enlistment as may be prescribed by applicable laws of the United States and the State of Mississippi and by regulations issued pursuant to this chapter. Such oath shall be taken and subscribed before any commissioned officer; provided, however, that enlisted personnel may also take and subscribe such oath before any warrant officer. A person making a false oath as to any statement contained in such enlistment contract shall, upon conviction, be deemed guilty of perjury.

HISTORY: Codes, 1942, § 8519-72; Laws, 1966, ch. 539, § 48; Laws, 1981, ch. 423, § 1, eff from and after July 1, 1981.

Cross References — Perjury, see §§ 97-9-59, 97-9-61.

JUDICIAL DECISIONS

1. In general.

One who takes statutory enlistment oath as a soldier in the National Guard becomes a member thereof. Birdsong v. Blackman, 127 Miss. 693, 90 So. 441, 1921 Miss. LEXIS 272 (Miss. 1921).

OPINIONS OF THE ATTORNEY GENERAL

Section 33-7-203 is the statute that a mayor-council municipality must look to for the procedure for appointing/electing municipal separate school district trustees. Cochran, August 9, 1996, A.G. Op. #96-0423.

RESEARCH REFERENCES

ALR.

Modern status of military enlistment contract. 62 A.L.R. Fed. 860.

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense §§ 55-57, 62, 63.

17A Am. Jur. Pl & Pr Forms (Rev), Military; Civil Defense, Form 6 (petition in federal court — for writ of habeas corpus — for release of minor — enlistee).

§ 33-7-205. Discharge of enlisted men.

(a) An enlisted man discharged from service in the National Guard shall receive a discharge in writing, in such form and with such classifications as is or shall be prescribed under regulations promulgated by the Adjutant General of the State of Mississippi or by the secretary of the appropriate federal service.

(b) Discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by the Adjutant General, State of Mississippi, or pursuant to regulations promulgated by the secretary of the appropriate federal service.

HISTORY: Codes, 1942, § 8519-73; Laws, 1966, ch. 539, § 49, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense § 34.

§ 33-7-207. Promotion and administrative reduction of enlisted men.

The promotion and administrative reduction of enlisted men, including non-commissioned officers, shall be pursuant to rules and regulations prescribed by the United States for the government and administration of the National Guard, or pursuant to such rules and regulations as may be prescribed by the Adjutant General of the State of Mississippi.

HISTORY: Codes, 1942, § 8519-74; Laws, 1966, ch. 539, § 50, eff from and after June 1, 1966.

§ 33-7-209. Uniform of enlisted men.

Every enlisted man of the Mississippi National Guard shall be furnished with a service uniform.

HISTORY: Codes, 1942, § 8519-75; Laws, 1966, ch. 539, § 51, eff from and after June 1, 1966.

ARTICLE 7.

ACTIVE STATE DUTY.

Sec.

33-7-301. Ordering organized militia into active state duty.
33-7-303. Power of Governor to declare martial law.
33-7-305. National Guard; duty when ordered out.
33-7-307. Authority to close establishments.
33-7-309. Control of unlawful assemblies.
33-7-311. Exemption from liability.
33-7-313. National Guard; pay; active state duty.
33-7-315. Expenses for active state duty.
33-7-316. Mississippi National Guard State Active Duty Emergency Operations Fund created.
33-7-317. Duty to maintain militia.

§ 33-7-301. Ordering organized militia into active state duty.

(1) The Governor shall have power in case of invasion, disaster, insurrection, riot, breach of the peace, or combination to oppose the enforcement of the law by force or violence, or imminent danger thereof or other grave emergency, to order into the active service of the state for such period, to such extent and in such manner as he may deem necessary, all or any part of the organized militia. Such power shall include the power to order the organized militia or any part thereof to function under the operational control of the United States army, navy, or air force commander in charge of the defense of any area within the state which is invaded or attacked or is or may be threatened with invasion or attack.

(2) Whenever any circuit judge of a county, sheriff, or mayor of a municipality, whose authority shall rank in the order named, shall apprehend

the outbreak of insurrection, riot, breach of the peace, or combination to oppose the enforcement of the law by force or violence within the jurisdiction of which such officer is by law the conservator of the peace, or in the event of disaster or other grave emergency, it shall forthwith become the duty of the circuit judge, sheriff or mayor, when it appears that such unlawful combination or disaster has progressed beyond the control of the civil authorities, to notify the Governor, and the Governor may then, in his discretion, if he deems the apprehension well-founded or the disaster or emergency of sufficient magnitude, order into the active service of the state, for such period, to such extent, and in such manner as he may deem necessary, all or any part of the organized militia.

(3) When the Governor orders into the active service of the state all or any portion of the organized militia as herein provided, he shall declare a state of emergency in such locality and it shall be the duty of the Governor to confirm such declaration and order in writing which shall state the area into which said force of the organized militia has been ordered.

HISTORY: Codes, 1942, § 8519-81; Laws, 1966, ch. 539, § 52, eff from and after June 1, 1966.

Cross References — Definition of term "insurrection," see § 1-3-23.
Manner of ordering out unorganized militia, see § 33-5-11.
Power of Governor to declare martial law, see § 33-7-303.
Emergency powers of the Governor, see § 33-15-13.

JUDICIAL DECISIONS

1. In general.

Statute making it obligatory on Governor to call out militia in enumerated cases, held inapplicable, in main, to constitutional and statutory sections which deal with particular and separate subject of execution of the laws. State v. McPhail, 182 Miss. 360, 180 So. 387, 1938 Miss. LEXIS 147 (Miss. 1938).

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military, and Civil Defense §§ 3, 30.

§ 33-7-303. Power of Governor to declare martial law.

(1) The Governor, if he deems it necessary to preserve law and order, may by proclamation declare martial law to be in effect in any county or area in the state. Such proclamation shall be in writing, shall define the limits of such martial law, and specify the forces to be used, and the extent and degree to which martial law may be employed.

(2)(a) Nothing in this section or in any other statute shall be construed to confer upon the Governor or any official or employee of any department, agency or political subdivision of the state the power to:

(i) Confiscate or seize a firearm, ammunition, or components of firearms or ammunition from a person who is in lawful possession of such firearm, ammunition, or components of ammunition; or

(ii) Impose additional restrictions as to the lawful possession, transfer, sale, carrying, storage, display or use of firearms, ammunition, or components of firearms or ammunition.

(b) For the purposes of this subsection:

(i) "Ammunition" means a cartridge, shell or other device containing explosive or incendiary material designed and intended for use in a firearm.

(ii) "Firearm" means any weapon which will or is designed to expel any projectile by the action of an explosive.

HISTORY: Codes, 1942, § 8519-82; Laws, 1966, ch. 539, § 53; Laws, 2014, ch. 443, § 1, eff from and after July 1, 2014.

Cross References — Power of Governor to order organized militia into active state duty, see § 33-7-301.

Emergency powers of the Governor, see § 33-15-13.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 374 et seq.

§ 33-7-305. National Guard; duty when ordered out.

It shall be the duty of the Governor, when ordering out any portion of the National Guard, for active state duty, to issue his orders to the officer in command of such troops as he may have ordered out, directing him as to the duty to be performed and the kind and extent of force to be used in the performance of such duty, and if the troops are so ordered out for the purpose of aiding the civil authorities, he shall designate in his order the civil authorities, if any, to be consulted by the commander of the troops and to what extent the troops will cooperate with or take orders from the civil authorities. When an armed military force is ordered out in aid of civil authorities, the orders of the civil officer or officers shall not extend beyond a direction of the general or specific objects to be accomplished. The tactical direction of the troops, the kind and extent of the force to be used, and the particular means to be employed are left solely with the military officers, subject to the orders received from the commander in chief.

HISTORY: Codes, 1942, § 8519-83; Laws, 1966, ch. 539, § 54, eff from and after June 1, 1966.

§ 33-7-307. Authority to close establishments.

Whenever any part of the military forces of this state is on active duty pursuant to the order of the Governor, the commanding officer may order the closing of any place where intoxicating liquors, arms, ammunition, dynamite or other explosives are sold, and forbid the sale, barter, loan or the giving away of these articles so long as any of the troops remain on duty in the vicinity where the place ordered closed may be located.

HISTORY: Codes, 1942, § 8519-84; Laws, 1966, ch. 539, § 55, eff from and after June 1, 1966.

Cross References — Power of Governor to order organized militia into active state duty, see § 33-7-301.

Emergency powers of the Governor, see § 33-15-13.

§ 33-7-309. Control of unlawful assemblies.

(a) Before using military forces in the dispersion of any riot, tumult, mob, or other lawless or unlawful assembly, or combination mentioned in this chapter, it shall be the duty of the civil officer calling out such military force, or some other conservator of the peace, of if none be present, then of the officer in command of the troops, or some person by him deputed to command persons composing such riotous, tumultuous, or unlawful assemblage or mob, to disperse and retire peacefully to their respective abodes and businesses; but, in no case, shall it be necessary to use any set or particular form or words in ordering the dispersion of any riotous, tumultuous or unlawful assembly; nor shall any such command be necessary where the officer or person, in order to give it, would necessarily be put in imminent danger of loss of life, or great bodily harm, or where such unlawful assembly or riot is engaged in the commission or perpetration of any forcible and atrocious felony, or in assaulting or attacking any civil officer, or person lawfully called to aid in the preservation of the peace, or is otherwise engaged in actual violence to any person or property.

(b) Any person or persons, composing or taking part in any riot, tumult, mob or lawless combination or assembly, mentioned in this chapter, who, after being duly commanded to disperse as hereinbefore provided in this section, wilfully and intentionally fails to do so, is guilty of a felony, and must, on conviction, be imprisoned in the penitentiary for not less than one (1), nor more than two (2) years.

(c) Any person who unlawfully assaults or fires at, or throws any missile at, against, or upon any member or body of the militia or National Guard, or civil officer, or other person lawfully aiding them, when assembling or assembled for the purpose of performing any duty under the provision of this section, must, on conviction, be imprisoned in the penitentiary for not less than two (2) years, nor more than five (5) years.

(d) If any portion of the militia or National Guard, or person lawfully aiding them in the performance of any duty under the provisions of this section, are assaulted, attacked, or are in imminent danger thereof, the commanding officer of such militia or National Guard need not await any orders from any civil magistrate, but may at once proceed to quell such attack, and take all other needful steps for the safety of his command.

(e) Whenever any shot is fired, or missile thrown, at or upon any body of the National Guard or militia in the performance of any duty under the provisions of this section it shall forthwith be the duty of every person in the assemblage from which the shot is fired, or missile thrown, immediately to disperse or retire therefrom, without awaiting orders to do so. Any person knowing or having reason to believe that a shot has been fired, or missile thrown, from any assemblage of which such person forms a part, or where he is present, and failing, without lawful excuse to retire immediately from such assemblage, is guilty of a misdemeanor, and must on conviction be imprisoned in the county jail for not less than one (1) month, nor more than one (1) year, and any person so remaining in such assemblage after being duly commanded to disperse, is guilty of a felony, and must, on conviction, be imprisoned in the penitentiary for not less than one (1) year, nor more than two (2) years.

(f) Any commander of any military forces of the state engaged in dispersing any mob, or persons engaged in riot or tumult, may place any person or persons in the immediate vicinity of such mob or persons in protective custody and remove them to and hold them at any military installation within the state for a period not to exceed forty-eight (48) hours. However, all such persons shall at their request at the end of such forty-eight (48) hour period be returned to any city or town within the county from which removed.

HISTORY: Codes, 1942, § 8519-85; Laws, 1966, ch. 539, § 56, eff from and after June 1, 1966.

Cross References — Crimes against public peace and safety generally, see §§ 97-35-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

RESEARCH REFERENCES

ALR.

What constitutes offense of unlawful assembly. 71 A.L.R.2d 875.

§ 33-7-311. Exemption from liability.

No member of the militia ordered into the active service of the state, or ordered into any Title 32 United States Code capacity for service during a period of declared emergency under the Mississippi Emergency Management Law, Section 33-15-1 et seq., shall be liable civilly or criminally for any act or omission done, or caused, ordered or directed to be done, by him in furtherance of and while in the performance of his military duty. When an action or proceeding of any nature shall be commenced in any court by any person against any officer or enlisted man of the militia for any act so done, or caused, ordered or directed to be done, all the attorneys' fees, expenses of the defense of such proceeding or action, civil or criminal, including fees of witnesses for the defense, defendant's court costs, and all costs for transcripts of records and abstract, thereof on appeal, shall be paid by the state, out of the Military Fund. It shall be the duty of the Attorney General, either personally or by one or more assistants, to defend the officer or enlisted man. Where the action or proceeding is criminal, the Adjutant General shall designate a judge advocate of the National Guard or other authorized state military or naval forces to conduct the defense of such member, or if the services of a judge advocate are not available, then he shall select some other competent attorney to conduct such defense, and the judge advocate or other attorney so selected shall receive and be paid out of the Military Fund a reasonable compensation for his professional services. In any such action or proceeding, the defendant may require the person instituting or prosecuting the same to file security for payment of all costs, which costs if recovered in action, the costs whereof have been paid out of the Military Fund, shall be paid into the State Treasury for the benefit of the Military Fund. In any such suit against a member of the militia of this state, such member shall be entitled to have the venue changed to the appropriate court of his county of residence. In any such suit against two (2) or more members of the militia of this state, each of them shall be entitled to a severance. The immunities granted in this section are in addition to any other immunities conferred upon the militia by any other law, and nothing in this section shall abrogate or repeal any other such immunities.

HISTORY: Codes, 1942, § 8519-86; Laws, 1966, ch. 539, § 57; Laws, 2015, ch. 385, § 1, eff from and after July 1, 2015.

§ 33-7-313. National Guard; pay; active state duty.

Whenever the National Guard, or any part thereof, is called out to aid civil authorities or to supersede same, or for any other active state duty, the officers, warrant officers and enlisted men of such force shall receive the same pay and allowances as officers, warrant officers and enlisted men of like grades and length of service in the Armed Forces of the United States. However, no one called out for such service shall receive less than Twenty-five dollars ($25.00) per day in addition to their allowances.

HISTORY: Codes, 1942, § 8519-87; Laws, 1966, ch. 539, § 58; Laws, 1974, ch. 309, eff from and after passage (approved Feb. 27, 1974).

RESEARCH REFERENCES

ALR.

Construction and Application of 37 U.S.C. § 206, Providing Compensation for Military Reserves and Members of National Guard with Respect to Inactive-Duty Training. 73 A.L.R. Fed. 2d 27.

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 145 et seq.

§ 33-7-315. Expenses for active state duty.

Whenever the National Guard, or any part thereof, is ordered out for active state duty, all expenses incurred in such service shall be paid from funds of the State of Mississippi not otherwise appropriated.

HISTORY: Codes, 1942, § 8519-88; Laws, 1966, ch. 539, § 59, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 145 et seq.

§ 33-7-316. Mississippi National Guard State Active Duty Emergency Operations Fund created.

There is hereby created in the State Treasury a special fund to be known as the "Mississippi National Guard State Active Duty Emergency Operations Fund" for the purpose of receiving monies appropriated or otherwise made available in any manner for deposit into the fund for maintaining annual general fund budget restrictions and enabling the Mississippi Military Department to respond to domestic events as directed by the Governor during declared states of emergency or in conjunction with approved emergency management assistance compacts. Monies in the special fund may be expended by the Mississippi Military Department, upon appropriation by the Legislature. Unexpended amounts remaining in such special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in such special fund shall be deposited to the credit of the special fund. No state general funds shall be deposited into the special fund.

HISTORY: Laws, 2017, ch. 433, § 1, eff from and after July 1, 2017.

§ 33-7-317. Duty to maintain militia.

The duty of governing and maintaining the National Guard of Mississippi not in the service of the United States rests upon the state, subject to the constitutional authority of congress.

HISTORY: Codes, 1942, § 8519-91; Laws, 1966, ch. 539, § 61, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 28.

ARTICLE 9.

EDUCATIONAL ASSISTANCE.

Sec.
33-7-401. Short title.

Sec.
33-7-403. Definitions.
33-7-405. National Guard members eligible for tuition and room and board assistance.
33-7-407. Conditions of eligibility.
33-7-409. Termination of benefits.
33-7-411. Adjutant General to administer program.
33-7-413. Budget; funding.

§ 33-7-401. Short title.

This article shall be known as the Mississippi National Guard Educational Assistance Law.

HISTORY: Laws, 1975, ch. 422, § 1; reenacted, Laws, 1980, ch. 334, § 1; reenacted, Laws, 1982, ch. 333, § 1, eff from and after July 1, 1982.

Editor's Notes — Laws of 1982, ch. 333, § 8, changed the repeal date of §§ 33-7-401 through 33-7-413 from July 1, 1982, to July 1, 1985. The repeal date was subsequently removed by Laws of 1985, ch. 317, § 3.

§ 33-7-403. Definitions.

As used in this article, the following words shall have the meanings as set forth by this section:

(a) "Mississippi National Guard" means federally recognized units of the Mississippi National Guard.

(b) "Gender" means words importing the masculine gender only shall apply to female as well as male.

(c) "Active member" means a member of a federally recognized unit of the Mississippi National Guard meeting the minimum requirements for satisfactory membership as defined in the Department of the Army and Air Force Regulations.

(d) "Tuition" means actual cost, including any fees and books, not to exceed the highest actual cost charged by any public, accredited institution of higher learning, vocational education school or community or junior college in Mississippi.

HISTORY: Laws, 1975, ch. 422, § 2; Laws, 1978, ch. 348, § 1; reenacted, Laws, 1980, ch. 334, § 2; reenacted and amended, Laws, 1982, ch. 333, § 2; Laws, 1985, ch. 317, § 1; Laws, 1994, ch. 569, § 1; Laws, 2000, ch. 327, § 1, eff from and after July 1, 2000.

Editor's Notes — Laws of 1982, ch. 333, § 8, changed the repeal date of §§ 33-7-401 through 33-7-413 from July 1, 1982, to July 1, 1985. The repeal date was subsequently removed by Laws of 1985, ch. 317, § 3.
Cross References — Additional definitions applicable to this chapter, see § 33-1-1.

§ 33-7-405. National Guard members eligible for tuition and room and board assistance.

The Adjutant General is hereby authorized to pay the tuition, room and board for any active member of the Mississippi National Guard who is enrolled or may enroll within the State of Mississippi in an accredited institution of higher learning, vocational education school or junior college. To be eligible for such benefits, the individual, at the time of his initial enrollment, must be a captain, lieutenant, warrant officer, cadet, officer candidate or enlisted member of the Mississippi National Guard, or a member of such guard who is participating in the educational program authorized by this section as of July 1, 1978; be at least seventeen (17) years of age; and be a resident and a qualified elector of the State of Mississippi. To be eligible for the room and board grant, an individual must also be in an officer producing program and be selected to receive the grant by the Adjutant General. The tuition may only be used for undergraduate studies and vocational education courses, whether such coursework is taken on a semester or clock-hour basis. In no event will any individual be eligible for payment of tuition after receipt of an undergraduate degree, whether received through this article or not. No person shall be eligible for a tuition and/or a room and board grant for more than ten (10) years after the date of the first tuition payment for him under this article. The Adjutant General shall set up minimum standards for performance that must be met in order to maintain eligibility for continuing in the program.

HISTORY: Laws, 1975, ch. 422, § 3; Laws, 1978, ch. 348, § 2; Laws, 1980, ch. 334, § 3; reenacted and amended, Laws, 1982, ch. 333, § 3; Laws, 1985, ch. 317, § 2; Laws, 1992, ch. 353, § 1; Laws, 1994, ch. 569, § 2; Laws, 2007, ch. 584, § 1, eff from and after July 1, 2007.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in this section. The phrase “the effective date of this act” was changed to “July 1, 1978.” The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor’s Notes — Laws of 1982, ch. 333, § 8, changed the repeal date of §§ 33-7-401 through 33-7-413 from July 1, 1982, to July 1, 1985. The repeal date was subsequently removed by Laws of 1985, ch. 317, § 3.

§ 33-7-407. Conditions of eligibility.

In addition to the prerequisites of Section 33-7-405, the following requirements must be met:

(a) The active member must have completed basic training, be a commissioned officer, be a cadet or be an officer candidate.

(b) He must be a member in good standing with the active Mississippi National Guard, as prescribed by regulations promulgated by the Department of the Army, the Department of the Air Force and the Military Department of Mississippi, at the time of application and during the entire semester/quarter for which benefits are received.

(c) The active member must not be eligible for veterans’ educational assistance pursuant to 38 USCS Sections 1601 through 1643 or pursuant to 38 USCS Sections 1651 through 1698.

(d) The active member must not (i) be eligible for educational assistance pursuant to 10 USCS Sections 2131 through 2135, or (ii) have qualified for an enlistment bonus pursuant to 37 USCS 308c within the past six (6) years. Nothing in this paragraph shall be construed to render ineligible any active member who is eligible for or has received a reenlistment bonus pursuant to 37 USC 308b. The Adjutant General is authorized and empowered, in his discretion, to waive the disqualifications for assistance, or any one of them, established in items (i) and (ii) of this paragraph upon a determination by him that all monies appropriated to fund the National Guard Educational Assistance Law will not be expended to provide benefits for eligible active members and that it would be in the best interests of the Mississippi National Guard to assist other active members who, but for the disqualifications established in this paragraph, would be eligible to receive assistance pursuant to this article.

HISTORY: Laws, 1975, ch. 422, § 4; reenacted, Laws, 1980, ch. 334, § 4; reenacted and amended, Laws, 1982, ch. 333, § 4; Laws, 1994, ch. 569, § 3, eff from and after July 1, 1994.

Editor's Notes — Laws of 1982, ch. 333, § 8, changed the repeal date of §§ 33-7-401 through 33-7-413 from July 1, 1982, to July 1, 1985. The repeal date was subsequently removed by Laws of 1985, ch. 317, § 3.

Federal Aspects— Educational Asssistance for Members of the Selective Reserve, formerly 10 USCS §§ 2131 et seq., see now 10 USCS §§ 16131 et seq.

Special pay: bonus for enlistment and reenlistment in the Selected Reserve, see 37 USCS §§ 308b and 308c.

Post-Vietnam Era Veterans' Educational Assistance, formerly 38 USCS §§ 1601 et seq., see now 38 USCS §§ 3201 et seq.

Veterans' Educational Assistance, formerly 38 USCS §§ 1651 et seq., see now 38 USCS §§ 3451 et seq.

§ 33-7-409. Termination of benefits.

In the event the individual's service in the Mississippi National Guard is terminated or his service becomes unsatisfactory while receiving the benefits afforded by this program, the benefits will be terminated. After termination for the above causes, an individual will be ineligible for any further benefits under this article. If for any reason an individual is dismissed from any school for academic or disciplinary reasons, he is ineligible for future benefits from this program. The Adjutant General shall be the final authority for making such determinations.

HISTORY: Laws, 1975, ch. 422, § 5; reenacted, Laws, 1980, ch. 334, § 5; reenacted, Laws, 1982, ch. 333, § 5, eff from and after July 1, 1982.

Editor's Notes — Laws of 1982, ch. 333, § 8, changed the repeal date of §§ 33-7-401 through 33-7-413 from July 1, 1982, to July 1, 1985. The repeal date was subsequently removed by Laws of 1985, ch. 317, § 3.

§ 33-7-411. Adjutant General to administer program.

The Adjutant General of Mississippi shall be responsible for the establishment of policies, the administration and implementation of the article. He is also the final authority in determining eligible applicants.

HISTORY: Laws, 1975, ch. 422, § 6; reenacted, Laws, 1980, ch. 334, § 6; reenacted, Laws, 1982, ch. 333, § 6, eff from and after July 1, 1982.

Editor's Notes — Laws of 1982, ch. 333, § 8, changed the repeal date of §§ 33-7-401 through 33-7-413 from July 1, 1982, to July 1, 1985. The repeal date was subsequently removed by Laws of 1985, ch. 317, § 3.

Cross References — Adjutant General, see § 33-3-7.

§ 33-7-413. Budget; funding.

The Adjutant General of Mississippi will annually submit to the Legislature through the Legislative Budget Office an estimated budget to support the provisions of this article. The Legislature shall fund this article by separate appropriation and the funds shall be subject to audit by the State Auditor of Public Accounts.

HISTORY: Laws, 1975, ch. 422, § 7; Laws, 1978, ch. 348, § 3; Laws, 1980, ch. 334, § 7; Laws, 1981, ch. 335, § 1; reenacted, Laws, 1982, ch. 333, § 7; Laws, 1984, ch. 488, § 196; Laws, 1994, ch. 569, § 4, eff from and after July 1, 1994.

Editor's Notes — Laws of 1982, ch. 333, § 8, changed the repeal date of §§ 33-7-401 through 33-7-413 from July 1, 1982, to July 1, 1985. The repeal date was subsequently removed by Laws of 1985, ch. 317, § 3.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

ARTICLE 11.

NATIONAL GUARD MUTUAL ASSISTANCE COUNTER-DRUG ACTIVITIES COMPACT.

Sec.
33-7-501. Short title.
33-7-503. National Guard Mutual Assistance Counter-Drug Activities Compact.

§ 33-7-501. Short title.

This article shall be known, and may be cited, as the National Guard Mutual Assistance Counter-Drug Activities Compact Law.

HISTORY: Laws, 1993, ch. 382, § 1, eff from and after July 1, 1993.

Comparable Laws from other States — Alabama Code Annotated, §§ 31-11-1 et seq.

Louisiana Revised Statutes, §§ 29:741 et seq.

§ 33-7-503. National Guard Mutual Assistance Counter-Drug Activities Compact.

The National Guard Mutual Assistance Counter-Drug Activities Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

NATIONAL GUARD MUTUAL ASSISTANCE COUNTER-DRUG ACTIVITIES COMPACT

ARTICLE I.

PURPOSE

The purposes of this compact are to:

A. Provide for mutual assistance and support among the party states in the utilization of the National Guard in drug interdiction, counter-drug and demand reduction activities.

B. Permit the National Guard of this state to enter into mutual assistance and support agreements, on the basis of need, with one or more law enforcement agencies operating within this state, for activities within this state, or with a National Guard of one or more other states, whether such activities are within or without this state, in order to facilitate and coordinate efficient, cooperative enforcement efforts directed toward drug interdiction, counter-drug activities and demand reduction.

C. Permit the National Guard of this state to act as a receiving and a responding state, as defined within this compact, and ensure the prompt and effective delivery of National Guard personnel, assets and services to agencies or areas that are in need of increased support and presence.

D. Permit and encourage a high degree of flexibility in the deployment of National Guard forces in the interest of efficiency.

E. Maximize the effectiveness of the National Guard in those situations which call for its utilization under this compact.

F. Provide protection for the rights of National Guard personnel when performing duty in other states in counter-drug activities.

G. Ensure uniformity of state laws in the area of National Guard involvement in interstate counter-drug activities by incorporating uniform laws within the compact.

ARTICLE II.

ENTRY INTO FORCE AND WITHDRAWAL

A. This compact shall enter into force when enacted into law by any two (2) states; thereafter, this compact shall become effective as to any other state upon its enactment thereof.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the Governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states.

ARTICLE III.

MUTUAL ASSISTANCE AND SUPPORT

A. As used in this article:

1. "Drug interdiction and counter-drug activities" means the use of National Guard personnel, while not in federal service, in any law enforcement support activities that are intended to reduce the supply or use of illegal drugs in the United States. These activities include, but are not limited to:

(a) Providing information obtained during either the normal course of military training or operations or during counter-drug activities to federal, state or local law enforcement officials that may be relevant to a violation of any federal or state law within the jurisdiction of such officials;

(b) Making available any equipment (including associated supplies or spare parts), base facilities or research facilities of the National Guard to any federal, state or local civilian law enforcement official for law enforcement purposes, in accordance with other applicable law or regulation;

(c) Providing available National Guard personnel to train federal, state or local civilian law enforcement in the operation and maintenance of equipment, including equipment made available above, in accordance with other applicable law;

(d) Providing available National Guard personnel to operate and maintain equipment provided to federal, state or local law enforcement officials pursuant to activities defined and referred to in this compact;

(e) Operation and maintenance of equipment and facilities of the National Guard or law enforcement agencies used for the purposes of drug interdiction and counter-drug activities;

(f) Providing available National Guard personnel to operate equipment for the detection, monitoring and communication of the movement of air, land and sea traffic, to facilitate communications in connection with law enforcement programs, to provide transportation for civilian law enforcement personnel and to operate bases of operations for civilian law enforcement personnel;

(g) Providing available National Guard personnel, equipment and support for administrative, interpretive, analytic or other purposes;

(h) Providing available National Guard personnel and equipment to aid federal, state and local officials and agencies otherwise involved in the prosecution or incarceration of individuals processed within the criminal justice system who have been arrested for criminal acts involving the use, distribution or transportation of controlled substances as defined in 21 U.S.C.S. 801 et seq., or otherwise by law, in accordance with other law.

2. "Demand reduction" means providing available National Guard personnel, equipment, support and coordination to federal, state, local and civil organizations, institutions and agencies for the purposes of the prevention of drug abuse and the reduction in the demand for illegal drugs.

3. "Requesting state" means the state whose Governor requested assistance in the area of counter-drug activities.

4. "Responding state" means the state furnishing assistance, or requested to furnish assistance, in the area of counter-drug activities.

5. "Law enforcement agency" means a lawfully established federal, state or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs or controlled substances laws.

6. "Official" means the appointed, elected, designated or otherwise duly selected representative of an agency, institution or organization authorized to conduct those activities for which support is requested.

7. "Mutual assistance and support agreement" or "agreement" means an agreement between the National Guard of this state and one or more law enforcement agencies or between the National Guard of this state and the National Guard of one or more other states, consistent with the purposes of this compact.

8. "Party state" refers to a state that has lawfully enacted this compact.

9. "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or possession of the United States.

B. Upon the request of a Governor of a party state for assistance in the area of drug interdiction, counter-drug and demand reduction activities, the Governor of a responding state shall have authority under this compact to send without the borders of his or her state and place under the temporary operational control of the appropriate National Guard or other military authorities of the requesting state, for the purposes of providing such requested assistance, all or any part of the National Guard forces of his or her state as he or she may deem necessary, and the exercise of his or her discretion in this regard shall be conclusive.

C. The Governor of a party state may, within his or her discretion, withhold the National Guard forces of his or her state from such use and recall any forces or part or member thereof previously deployed in a requesting state.

D. The National Guard of this state is hereby authorized to engage in counter-drug activities and demand reduction.

E. The Adjutant General of this state, in order to further the purposes of this compact, may enter into a mutual assistance and support agreement with one or more law enforcement agencies of this state, including federal law enforcement agencies operating within this state, or with the National Guard of one or more other party states to provide personnel, assets and services in the area of counter-drug activities, and demand reduction provided that all parties to the agreement are not specifically prohibited by law to perform such activities.

F. The agreement must set forth the powers, rights and obligations of the parties to the agreement, where applicable, as follows:

1. Its duration;
2. The organization, composition and nature of any separate legal entity created thereby;
3. The purpose of the agreement;
4. The manner of financing the agreement and establishing and maintaining its budget;
5. The method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
6. Provision for administering the agreement, which may include creation of a joint board responsible for such administration;
7. The manner of acquiring, holding and disposing of real and personal property used in this agreement, if necessary;
8. The minimum standards for National Guard personnel implementing the provisions of this agreement;
9. The minimum insurance required of each party to the agreement, if necessary;
10. The chain of command or delegation of authority to be followed by National Guard personnel acting under the provisions of the agreement;
11. The duties and authority that the National Guard personnel of each party state may exercise; and
12. Any other necessary and proper matters.

Agreements prepared under the provisions of this compact are exempt from any general law pertaining to intergovernmental agreements.

G. As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the office of the Attorney General of Mississippi. The Attorney General of Mississippi may delegate his approval authority to the appropriate attorney for the Mississippi National Guard subject to those conditions which he decides are appropriate. Such delegation must be in writing:

1. The Attorney General, or his agent in the Mississippi National Guard as stated above, shall approve an agreement submitted to him under this part unless he finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Mississippi. If the Attorney General disapproves an agreement, he shall provide a written explanation to the Adjutant General of the National Guard.
2. If the Attorney General, or his authorized agent as stated above, does not disapprove an agreement within thirty (30) days after its submission to him, it is considered approved.

H. Whenever National Guard forces of any party state are engaged in the performance of duties, in the area of drug interdiction, counter-drug and demand reduction activities, pursuant to orders, they shall not be held personally liable for any acts or omissions which occur during the performance of their duty.

ARTICLE IV.

RESPONSIBILITIES

A. Nothing in this compact shall be construed as a waiver of any benefits, privileges, immunities or rights otherwise provided for National Guard personnel performing duty pursuant to Title 32 of the United States Code nor shall anything in this compact be construed as a waiver of coverage provided for under the Federal Tort Claims Act. In the event that National Guard personnel performing counter-drug activities do not receive rights, benefits, privileges and immunities otherwise provided for National Guard personnel as stated above, the following provisions shall apply:

1. Whenever National Guard forces of any responding state are engaged in another state in carrying out the purposes of this compact, the members thereof so engaged shall have the same powers, duties, rights, privileges and immunities as members of National Guard forces of the requesting state. The requesting state shall save and hold members of the National Guard forces of responding states harmless from civil liability except as otherwise provided herein, for acts or omissions which occur in the performance of their duty while engaged in carrying out the purposes of this compact, whether responding forces are serving the requesting state within the borders of the responding state or are attached to the requesting state for purposes of operational control.
2. Subject to the provisions of paragraphs 3, 4 and 5 of this article, all liability that may arise under the laws of the requesting state or the responding states, on account of or in connection with a request for assistance or support, shall be assumed and borne by the requesting state.
3. Any responding state rendering aid or assistance pursuant to this compact shall be reimbursed by the requesting state for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid, and for the cost of the materials, transportation and maintenance of National Guard personnel and equipment incurred in connection with such request, provided that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense or other cost.
4. Unless there is a written agreement to the contrary, each party shall provide, in the same amounts and manner as if they were on duty within their state, for pay and allowances of the personnel or its National Guard units while engaged without the state pursuant to this compact and while going to and returning from such duty pursuant to this compact.

5. Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its National Guard forces in case such members sustain injuries or are killed within their own state shall provide for the payment of compensation and death benefits in the same manner and on the same terms in the event such members sustain injury or are killed while rendering assistance or support pursuant to this compact. Such benefits and compensation shall be deemed items of expense reimbursable pursuant to paragraph 3 of this article.

B. Officers and enlisted personnel of the National Guard performing duties subject to proper orders pursuant to this compact shall be subject to and governed by the provisions of their home state code of military justice whether they are performing duties within or without their home state. In the event that any National Guard member commits, or is suspected of committing, a criminal offense while performing duties pursuant to this compact without his or her home state, he or she may be returned immediately to his or her home state and such home state shall be responsible for any disciplinary action to be taken. However, nothing in this section shall abrogate the general criminal jurisdiction of the state in which the offense occurred.

ARTICLE V.

DELEGATION

Nothing in this compact shall be construed to prevent the Governor of a party state from delegating any of his or her responsibility or authority respecting the National Guard, provided that such delegation is otherwise in accordance with law; for purposes of this compact, however, the Governor shall not delegate the power to request assistance from another state.

ARTICLE VI.

LIMITATIONS

Nothing in this compact shall:

1. Authorize or permit National Guard units or personnel to be placed under the operational control of any person not having the National Guard rank or status required by law for the command in question.

2. Deprive a properly convened court of jurisdiction over an offense or a defendant merely because of the fact that the National Guard, while performing duties pursuant to this compact, was utilized in achieving an arrest or indictment.

ARTICLE VII.

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable; and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of the United States or any state or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

HISTORY: Laws, 1993, ch. 382, § 2, eff from and after July 1, 1993.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected references in this section. The word "statute" in Article III, subsection F, was changed to "compact" so that "Agreements prepared under the provisions of this statute..." will read as "Agreements prepared under the provisions of this compact..." In addition, the word 'or' in Article IV, subsection A, was changed to "of" so that "...pursuant to Title 32 or the United States Code..." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Comparable Laws from other States — Alabama Code, §§ 31-11-1 et seq.

Louisiana Revised Statutes, §§ 29:741 et seq.

Federal Aspects— Comprehensive Drug Abuse Prevention and Control Act, see 21 USCS §§ 801 et seq. Federal Tort Claims Act, see 28 USCS §§ 1346 et seq., 2671 et seq. National Guard, generally, see 32 USCS § 101 et seq.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Military and Civil Defense §§ 28 et seq.

72 Am. Jur. 2d, States, Territories, and Dependencies § 5.

CJS.

81A C.J.S., States §§ 67-70.

CHAPTER 9.

PROPERTY AND FINANCES

Sec.

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§ 33-9-1. Expenses paid from militia appropriation.

All expenditures necessary to carry the provisions of the chapter into effect are hereby authorized to be incurred and paid out of the military fund, except where otherwise specifically provided.

HISTORY: Codes, 1942, § 8519-92; Laws, 1966, ch. 539, § 62, eff from and after June 1, 1966.

Cross References — Definition of terms used in this chapter, see § 33-1-1.
Retention of prior tenures, enlistments, rights and privileges, see § 33-1-35.
Prior offenses not abolished, see § 33-1-37.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 33.

§ 33-9-3. United States property and fiscal officer; bond.

The Governor shall appoint, designate or detail, on the recommendation of the Adjutant General, subject to the approval of the Secretary of the Army and the Secretary of the Air Force, a federally recognized field grade officer of the Mississippi National Guard who shall be designated as the United States property and fiscal officer for the state. Before entering upon the performance of his duties as property and fiscal officer he shall be required to give good and sufficient bond to the United States, as required by federal statutes, for the faithful performance of his duties and for the safekeeping and proper disposition of the federal funds and property entrusted to his care.

HISTORY: Codes, 1942, § 8519-93; Laws, 1966, ch. 539, § 63, eff from and after June 1, 1966.

Cross References — Property and fiscal officer general duties, see § 33-9-5.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense §§ 9, 10.

§ 33-9-5. United States property and fiscal officer; general duties.

The United States property and fiscal officer for the state shall receipt and account for all funds and property belonging to the United States in possession of the National Guard and shall make returns and reports concerning such funds and property as may be required by the Secretary of the Army and the Secretary of the Air Force. He shall render, through the National Guard Bureau, such accounts of federal funds entrusted to him for disbursement as may be required by the Secretary of the Army and the Secretary of the Air Force. The secretary concerned may cause an inspection of the accounts and records of the property and fiscal officer to be made by an inspector general of his department at least once a year. The United States property and fiscal officer shall function under the direction of the Adjutant General.

HISTORY: Codes, 1942, § 8519-94; Laws, 1966, ch. 539, § 64, eff from and after June 1, 1966.

RESEARCH REFERENCES

ALR.
The government-contractor defense to state products-liability claims. 53 A.L.R.5th 535.

§ 33-9-7. Annual settlements for property both federal and state.

(a) **Federal Property.** — The Adjutant General shall direct the USPFO to audit and effect annual settlements with responsible officers having federal property accounts. The USPFO shall cause the responsible officer to prepare and submit proper adjustment documents to cover any discrepancies discovered during such audit. When it is determined by duly appointed reviewing authority that losses were incurred due to fault or negligence of the responsible officer, he shall be held pecuniarily liable. When the responsible officer has been held pecuniarily liable, the Adjutant General shall make demand on the responsible officer for payment to the treasurer of the United States for the specified amount. The Adjutant General shall enter or cause to be entered a suit on the bond of such officer upon failure to comply with demand for payment.

(b) **State Property.** — All property of a nonconsumable nature procured by the Adjutant General from state appropriated funds and like property purchased from unit maintenance funds shall be accounted for as state property. Property donated from any sources for National Guard use shall be considered state owned property. The Adjutant General shall maintain state property lists for all units and activities of the Mississippi National Guard. The Adjutant General shall cause state property accounts to be audited as he deems necessary. If the audit reflects shortages, the Adjutant General will cause an investigation to be made and take appropriate action. If such shortages are found to be due to the fault or negligence of the responsible officer, the Adjutant General shall make demand on the responsible officer for payment to the military fund of Mississippi for the specified amount. The Adjutant General shall enter or cause to be entered a suit on the bond of such officer upon failure to comply with demand for payment.

HISTORY: Codes, 1942, § 8519-95; Laws, 1966, ch. 539, § 65, eff from and after June 1, 1966.

§ 33-9-9. Prerequisites to sharing in appropriations.

No unit or activity shall participate in the annual appropriation for the maintenance of the militia unless the proper officer of such organizations shall have rendered the required training or was excused by proper authority.

HISTORY: Codes, 1942, § 8519-96; Laws, 1966, ch. 539, § 66; Laws, 1970, ch. 458, § 1, eff from and after July 1, 1970.

§ 33-9-11. Disbursements of military department funds.

The Adjutant General and the Comptroller of the Military Department are responsible for all obligations or indebtedness incurred in the name of the agency or by any employee for them when incurred by such employee acting within the scope of his or her employment. All bills, claims and demands against Military Department funds shall be certified or verified in the manner prescribed by regulations promulgated by the State Auditor and State Treasurer.

Purchase orders will be signed by the Adjutant General, comptroller or such other persons as the Adjutant General may designate in writing to the State Auditor. Requisitions for issuance of warrant will be signed by persons designated by the Adjutant General and will be approved by the Adjutant General, comptroller or such other persons as the Adjutant General may designate in writing to the State Auditor.

HISTORY: Codes, 1942, § 8519-97; Laws, 1966, ch. 539, § 67; Laws, 1974, ch. 308, eff from and after passage (approved Feb. 27, 1974).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 33-9-13. Allowances for maintenance.

Each unit shall be entitled to such maintenance fund allowances as may be provided in the annual appropriations act as apportioned by the Adjutant General under such regulations as the Governor may prescribe.

HISTORY: Codes, 1942, § 8519-98; Laws, 1966, ch. 539, § 68, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 33.

§ 33-9-15. Transportation and subsistence of militia on active state duty.

There shall be provided by the state transportation for all officers and transportation and subsistence for all enlisted men who shall be lawfully ordered to active state duty. Necessary transportation, quartermaster's stores and subsistence for troops when ordered on duty shall be contracted for by the proper officers and paid for as other military expenses.

HISTORY: Codes, 1942, § 8519-99; Laws, 1966, ch. 539, § 69, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 33.

§ 33-9-17. Officers to surrender property.

Every officer of the Mississippi National Guard shall immediately upon his vacating an office, turn over to his successor, or to such other officer as may be designated by the commander in chief, or other competent authority, all records, retained copies of reports, public funds, and public military property pertaining to his former office or command. Any officer who shall fail or refuse to so turn over public funds or military property or records when called upon to do so, or shall abandon the same, or who shall fail or refuse to account for the same in the proper manner prescribed by law and regulations, shall be subject to trial by court-martial and punished as the court may direct.

HISTORY: Codes, 1942, § 8519-100; Laws, 1966, ch. 539, § 70, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 9.

§ 33-9-19. Appropriation of public property.

Any officer or enlisted man taking any government property from any military installation without the consent of his unit commander shall be considered as appropriating government property for his own use and may be tried in any court of competent jurisdiction and on conviction thereof shall suffer a fine in any sum, not exceeding One Hundred Dollars ($100.00), together with the cost of such government property, or imprisonment in the county jail for a period not exceeding sixty (60) days, or shall suffer both fine and imprisonment.

HISTORY: Codes, 1942, § 8519-101; Laws, 1966, ch. 539, § 71, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 10.

§ 33-9-21. Purchase or receiving of military property a misdemeanor.

If any person knowingly purchases or receives in pawn or pledge any military property of the state or of the United States he shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to imprisonment for a period not exceeding one (1) year, or fined not exceeding One Thousand Dollars ($1,000.00), or to both such fine and imprisonment.

HISTORY: Codes, 1942, § 8519-102; Laws, 1966, ch. 539, § 72, eff from and after June 1, 1966.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 10.

§ 33-9-23. Disposition of state property.

All military property of the state which after proper inspection shall be found unsuitable for use of the state shall, notwithstanding any law to the contrary, be disposed of in such a manner as the Adjutant General shall direct and the proceeds thereof paid into the Military Fund of the state.

HISTORY: Codes, 1942, § 8519-103; Laws, 1966, ch. 539, § 73, eff from and after June 1, 1966.

Editor's Notes — Laws of 2012, ch. 497, § 1, provides:

"SECTION 1. (1) The Adjutant General of the State of Mississippi is hereby authorized, under the authority of Section 33-9-23, to transfer and convey to the Town of Prentiss, Mississippi, located in Jefferson Davis County, for the use and occupancy of the Prentiss Police and Fire Departments the following property and improvements constructed thereon owned and formerly used by the United States of America for a National Guard Armory located at 1340 Highway 84 West, Prentiss, Mississippi, which is currently under a short-term lease with the Town of Prentiss, being more particularly described as follows:

"4.36 acres, more or less, in the NW ¼ of the SE ¼ Section 11, T-7-N, R-19-W.

"All bearing shown are referenced to found monuments shown on the West line of the East ½ of Section 11, T-7-N, R-19-W, Jefferson Davis County, Mississippi. They are based on the NAD 83 West Zone State Plane Coordinate System and are derived from a global positioning system observation.

"The north and south property lines are subject to road right-of-way.

"(2) Such land and improvements may be transferred or conveyed to the Town of Prentiss, Mississippi, for the use and occupancy of the Prentiss Police and Fire Departments for any consideration and upon such other terms and conditions as the Adjutant General may deem advisable.

"(3) The Adjutant General is authorized to convey and transfer title to said land and improvements only. Any such conveyance shall provide that title to said land and improvements shall revert to the State of Mississippi in the event the Town of Prentiss ceases to use the real property for the purposes intended in this legislation for which it was transferred or conveyed."

§ 33-9-25. Mississippi National Guard Special Construction Project Design Fund.

There is hereby created in the State Treasury a special fund to be known as the Mississippi National Guard Special Construction Project Design Fund for the purpose of receiving monies appropriated for the purpose of defraying the expense of construction design to enable the Mississippi Military Department to access federal construction funds. Unexpended amounts remaining in such special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in such special fund shall be deposited to the credit of the special fund.

HISTORY: Laws, 1999, ch. 394, § 1, eff from and after July 1, 1999.

CHAPTER 11.

TRAINING FACILITIES

Sec.
33-11-1. Acquisition of real estate.
33-11-3. Custody and use of training facilities.
33-11-5. Maintenance of facilities.
33-11-7. Leasing of training facilities.
33-11-9. Indemnity clauses in leases acquired for camp site.
33-11-11. Tax-forfeited lands near Camp Shelby to become part of military reservation.
33-11-13. Exchange of parcels of military reservation for lands vital to its purposes.
33-11-15. Leases to United States authorized for National Guard armories.
33-11-17. Mineral leasing of Camp Shelby site.
33-11-18. Sale or disposal of minerals, timber and other forest products taken from Camp Shelby military reservation.
33-11-19. Procurement of federal funds.

§ 33-11-1. Acquisition of real estate.

The Adjutant General of this state may receive on behalf of the state conveyances of real property suitable for the construction of any required training facility. In accepting any such conveyance on behalf of the state, the state shall incur no liability for the purchase of such real estate unless it can be absorbed by the current appropriation for the operation of the military department. The Adjutant General is further empowered to enter into cooperative agreements with any county, municipality, or other political subdivision, of the state for the purpose of providing facilities for National Guard training purposes.

HISTORY: Codes, 1942, § 8519-111; Laws, 1966, ch. 539, § 74, eff from and after June 1, 1966.

Cross References — Definition of terms used in this chapter, see § 33-1-1.
Retention of prior tenures, enlistments, rights and privileges, see § 33-1-35.
Prior offenses not abolished, see § 33-1-37.
Acquisition of real estate by lease, forfeited tax lands and exchange of land, see §§ 33-11-7, 33-11-11 and 33-11-13.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 33.

§ 33-11-3. Custody and use of training facilities.

The Adjutant General shall be the state custodian of training facilities. No training facility shall be used for any other than a strictly military purpose without the recommendation of the officer in charge thereof and approval of the Adjutant General.

HISTORY: Codes, 1942, § 8519-112; Laws, 1966, ch. 539, § 75, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 33.

§ 33-11-5. Maintenance of facilities.

The Adjutant General shall be responsible for the proper maintenance of training facilities and is authorized to expend funds appropriated for this purpose.

HISTORY: Codes, 1942, § 8519-113; Laws, 1966, ch. 539, § 76; Laws, 1971, ch. 326, § 1, eff from and after February 25, 1971.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 9.

§ 33-11-7. Leasing of training facilities.

The Adjutant General of the state is authorized and empowered to lease for and on behalf of the Mississippi National Guard, and for its use and benefit, such real property within the state as may be necessary and suitable for military installations and training facilities or other military purposes. Said leases may be made for a period of not to exceed ninety-nine (99) years. Payments under such leases may be paid out of the military fund.

HISTORY: Codes, 1942, § 8519-114; Laws, 1966, ch. 539, § 77, eff from and after June 1, 1966.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 33.

§ 33-11-9. Indemnity clauses in leases acquired for camp site.

Whenever it shall become necessary or desirable to lease any lands to provide National Guard training facilities, the Adjutant General of Mississippi is hereby authorized and empowered to place in such leases any indemnity clauses that may be required to indemnify any owners of such lands for damages caused to such lands from training uses. Payment for any such damages shall only be made after written appraisal and estimate of such damages by representatives of the Mississippi state forestry commission. Such payment shall only be made from such funds as the Adjutant General may have available for such purposes or from such funds as may be appropriated by the legislature of the State of Mississippi for such purposes. If either the Adjutant General or the owner are dissatisfied with the amount of such damages as estimated by the state forestry commission representative, then the Adjutant General or such owner may appeal to the circuit court of the county in which the land is located within thirty (30) days from the receipt of such written appraisal and estimate for trial and determination, and either the owner or Adjutant General may appeal to the state supreme court from an adverse decision in the circuit court as provided by law.

HISTORY: Codes, 1942, § 8519-115; Laws, 1966, ch. 539, § 78, eff from and after June 1, 1966.

Cross References — State forestry commission, see § 49-19-1.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military, and Civil Defense § 9.

§ 33-11-11. Tax-forfeited lands near Camp Shelby to become part of military reservation.

All tracts of lands belonging to private parties which touch upon and are adjacent to or located within the area of the present military reservation comprising the permanent National Guard camp site and firing ranges in Forrest and Perry Counties, Mississippi, known as Camp Shelby, which have been or may hereafter be forfeited to the State of Mississippi for nonpayment of taxes and are owned by the state shall be held and retained by the State of Mississippi as additions to and as a part of said Camp Shelby military reservation. No tax patents shall be issued therefor to private parties unless the Camp Shelby committee, composed of the Adjutant General of the State of Mississippi, the United States property and disbursing officer of the State of Mississippi, and the senior National Guard officer from the infantry, artillery, engineers, medical corps, and quartermaster corps, shall first certify in writing to the land commissioner of the State of Mississippi that such forfeited tax lands are not needed for said military reservation or an expansion thereof, which certificate shall be made in duplicate, the original thereof to be attached to the application for any such patents and the copy attached to and be made a part of any patent issued therefor. No forfeited tax lands shall be withheld from sale or patent by the state for a period longer than six (6) months from the date of maturity of title thereof in the State of Mississippi unless the Governor shall, by proclamation prior to the expiration of such six (6) months period, set aside and dedicate such lands as part of the Camp Shelby military reservation.

HISTORY: Laws, 1940, ch. 305, § 1, eff from and after passage (approved May 8, 1940).

Editor's Notes — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the Secretary of State.

§ 33-11-13. Exchange of parcels of military reservation for lands vital to its purposes.

(1) The Camp Shelby committee, composed of the Adjutant General of the State of Mississippi, the United States property and disbursing officer for the State of Mississippi, and the senior National Guard officer from the infantry, artillery, engineers, medical corps, and quartermaster corps, with the advice and consent of the Governor of Mississippi, are hereby authorized to negotiate and enter into trades with private parties owning lands within, or within the vicinity of, the military reservation comprising the permanent National Guard camp site in Forrest and Perry Counties, Mississippi, known as Camp Shelby, which private lands, in the opinion of the committee, are needed for said permanent camp site and firing ranges, by exchanging therefor parcels of state lands belonging to said military reservation, which parcels, in the judgment of said committee, are not needed for or as vital to said camp site and firing ranges as the parcels owned by private persons to be acquired in exchange therefor.

(2) The committee shall make a finding that the lands to be so acquired are more vital and essential to the needs and betterment of said permanent camp site and firing ranges than parcels of state lands to be exchanged therefor, and such exchanges shall be approved by the Department of Defense. In no case shall the state lands so exchanged exceed in acreage the lands acquired in exchange therefor.

(3) The state lands to be so exchanged shall be conveyed by deeds executed by the Governor of Mississippi, attested by the secretary of state under the great seal of the State of Mississippi, and approved by all the members of the said Camp Shelby committee.

(4) The Attorney General of the State of Mississippi shall pass upon the title and the deeds to the lands to be acquired, and shall approve their legality before they are accepted by the State of Mississippi.

HISTORY: Laws, 1940, ch. 306, §§ 1-4, eff from and after passage (approved May 6, 1940).

Cross References — Authority to lease lands to the United States for the purpose of securing construction of Air National Guard armories, see § 33-11-15.

§ 33-11-15. Leases to United States authorized for National Guard armories.

The Adjutant General of Mississippi, in his discretion, subject to the approval of the Governor and the Attorney General, is hereby authorized and empowered to execute leases to the United States of America on lands held through deed or lease by the State of Mississippi for National Guard purposes, for the purpose of securing construction of Air National Guard armories thereon at the expense of the federal government. Likewise, the governing board of any county, municipality or school district is authorized to lease lands to the United States for such purpose, and the Adjutant General of Mississippi and said governing boards are authorized to execute such instruments as may be necessary to carry out the purposes of this section.

HISTORY: Codes, 1942, § 8590.5; Laws, 1955, Ex. ch. 123.

§ 33-11-17. Mineral leasing of Camp Shelby site.

The Adjutant General is authorized to lease the Camp Shelby training site for oil and gas and other minerals exploration and to expend revenues therefrom in maintaining and developing the facilities.

He shall cause to be published a legal notice of the proposed lease once each week for three (3) consecutive weeks in a newspaper of general circulation published in Forrest, Harrison and Hinds Counties and in not less than one (1) oil and gas periodical having general circulation in this state, with the last publication to be completed not less than ten (10) days from the date sealed bids are to be received. All bids will be accompanied by a five percent (5%) bid bond in the form of a certified or cashier's check or in the form of a bid bond of a surety company qualified to do business in this state. If the Adjutant General deems the highest and best bid acceptable, he will make his recommendations in writing to the state oil and gas board for its consideration. The board is hereby authorized to either approve or disapprove the bid or bids, which action shall become final. Any such lease executed by the Adjutant General for oil, gas and for other minerals shall contain contractual provisions which shall not be for more than seven-eighths (7/8) of such oil, gas and for other minerals, retaining to the state at least one-eighth (1/8) royalty to be paid as prescribed by the state oil and gas board. No lease shall be for a primary term in excess of six (6) years.

HISTORY: Codes, 1942, § 8519-113; Laws, 1966, ch. 539, § 76; Laws, 1971, ch. 326, § 1, eff from and after passage (approved February 25, 1971).

§ 33-11-18. Sale or disposal of minerals, timber and other forest products taken from Camp Shelby military reservation.

(1) In order to conserve and promote timber development at Camp Shelby, Mississippi, the state forestry commission is directed to lend its services, advice and recommendations to the Adjutant General of Mississippi in developing a sound timber management program on state-owned lands in said military reservation.

(2) The Adjutant General is authorized and empowered to sell such trees, timber, stumps, naval stores faces or other forest products on state-owned lands in the military reservation at Camp Shelby, Mississippi, as shall be recommended by the state forestry commission and to secure the services of the state forestry commission in the reforestation and use of planting, cutting and practices recommended by the state forestry commission. The Adjutant General, however, is empowered to cut timber to provide clearing for military purposes and for rights-of-way without recommendation of the state forestry commission, and is authorized to sell such timber at the prevailing scale without advertising for bids, when the value thereof is estimated at less than One Thousand Five Hundred Dollars ($1,500.00) by the state forestry commission. Based on the recommendation and value estimate of the state forestry commission, the Adjutant General is authorized to sell at the prevailing price, without advertising for bids, timber which has been damaged by storm, fire, insect, disease or otherwise. Based on recommendations by the state forestry commission, as provided by the timber management program, the Adjutant General may dispose of nonmarketable timber that is diseased or has been deadened by the state forestry commission, authorizing noncommercial public cutting when considered in the best interest of the state. Provided, however, that before any other sale of timber may be made as herein authorized, the Adjutant General shall advertise for bids on said timber in a newspaper of general circulation in the State of Mississippi at least once each week for three (3) consecutive weeks prior to the date upon which bids are to be received.

The Adjutant General is hereby authorized to pay all of the funds derived from any timber and other forest product sales on state-owned lands in said reservation into a special fund in the state treasury, which shall be a revolving fund, to be used for the maintenance, development and improvement of said military reservation at Camp Shelby, Mississippi, and out of which the Adjutant General may pay the state forestry commission the cost incurred by the state forestry commission in selecting and cutting trees, tree planting, elimination of undesirable trees and shrubs, construction of fire lanes, control of insect and disease outbreaks, and other desirable aspects of forest management practices on this military reservation for the benefit of this military reservation.

The Adjutant General of Mississippi, with concurrence of the commission of budget and accounting, may pay from available Camp Shelby timber funds, restitution for timber and/or minerals cut and/or removed without permission, by employees or authorized agents of the state military department, from private property whose sales, use or damage shall have enriched and/or benefited the state military department.

The funds derived from any timber and other forest product sales as herein provided shall be paid by the state treasurer upon warrants issued by the state auditor of public accounts and the said auditor shall issue his warrant upon requisitions signed by the proper person, officer or officers in the manner provided by law for funds appropriated for support of the Mississippi National Guard.

The Adjutant General shall make an annual report to the legislature on receipts and disbursements in connection with all funds derived from minerals, timber and other forest product sales on state-owned lands at the Camp Shelby military reservation.

HISTORY: Laws, 1984, ch. 346, § 1, eff from and after passage (approved April 13, 1984).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — State Forestry commission, see § 49-19-1.

§ 33-11-19. Procurement of federal funds.

(a) The Adjutant General, subject to the approval of the Governor, is hereby authorized and empowered to negotiate for, accept and approve projects, proposals, contracts and agreements for the construction, reconstruction, expansion, conversion, purchase, lease, repair, rehabilitation, improvement, equipping, furnishing, maintenance and operation, in whole or in part with federal funds, of armories, camps, ranges, bases or any building, structure or facility for the organized militia.

(b) When federal funds are made available or provided by the United States to the state either directly or by way of reimbursement in whole or in part for any monies expended by the state for the construction, demolition, reconstruction, expansion, conversion, purchase, lease, repair, rehabilitation, improvement, equipping, furnishing, maintenance and operation of any armory, camp, range, base, building, structure or facility for the organized militia, the Adjutant General of the state is hereby authorized to receive such funds in behalf of the state.

HISTORY: Codes, 1942, § 8519-116; Laws, 1966, ch. 539, § 79, eff from and after June 1, 1966.

CHAPTER 13.

MISSISSIPPI CODE OF MILITARY JUSTICE

Article 1. General Provisions. 33-13-1
Article 3. Apprehension and Restraint. 33-13-17
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ARTICLE 1.

GENERAL PROVISIONS.

Sec.
33-13-1. Definitions.
33-13-3. Repealed.
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33-13-7. Persons subject to code.
33-13-9. Jurisdiction to try certain personnel.
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33-13-13. Territorial applicability of code.
33-13-15. Judge advocates and legal officers.

§ 33-13-1. Definitions.

In this chapter unless the context otherwise requires:

(a) "State military forces" means the National Guard of this state, as defined in Section 101(3), (4) and (6) of Title 32, United States Code, and any other militia or military forces organized under the Constitution and laws of this state.

(b) "Commanding officer" includes commissioned officers and warrant officers, as applicable.

(c) "Officer" means commissioned or warrant officer.

(d) "Superior commissioned officer" means a commissioned officer superior in rank or command.

(e) "Officer candidate" means a cadet of the state officer candidate school.

(f) "Enlisted member" means a person in an enlisted grade.

(g) "Military" refers to any or all of the state military forces.

(h) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(i) "Military judge" means an official of a court-martial detailed in accordance with Section 33-13-183.

(j) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

(k) "Legal officer" means any commissioned officer of the state military forces designated to perform legal duties for a command.

(*l*) "State judge advocate" means the judge advocate of the state military forces, commissioned therein, and responsible for supervising the administration of military justice in the state military forces, and performing such other legal duties as may be required by the Adjutant General.

(m) "Grade" means a step or degree, in a graduated scale of office or military rank that is established and designated as a grade by law or regulation.

(n) "Rank" means the order of precedence among members of the state military forces.

(o) "Military duty (or duty status)" means all duty authorized under the Constitution and laws of the State of Mississippi and all training authorized under Title 32, United States Code.

(p) "Judge advocate" means any commissioned officer who is certified by the state judge advocate.

(q) "Military court" means a court-martial, a court of inquiry, a military commission, or a provost court.

(r) "May" is used in a permissive sense.

(s) "Shall" is used in an imperative sense.

(t) "He", where used, means, and shall be interpreted to include, both the masculine and feminine gender.

(u) "Code" means this chapter which may be cited as the Mississippi Code of Military Justice.

HISTORY: Codes, 1942, § 8529-01; Laws, 1966, ch. 538, § 1; Laws, 1981, ch. 362, § 1, eff from and after July 1, 1981.

Cross References — Apprehension defined, see § 33-13-17.
Arrest defined, see § 33-13-21.
Comparable Laws From Other States — Alabama: Code of Ala. § 31-2A-1 et seq.

Alaska: Alaska Stat. § 26.05.360 et seq.
Arizona: A.R.S. § 26-1001 et seq.
Connecticut: Conn. Gen. Stat. § 27-141 et seq.
Florida: Fla. Stat. § 250.01 et seq.
Georgia: O.C.G.A. § 38-2-1000 et seq.
Hawaii: HRS § 124A-1 et seq.
Idaho: Idaho Code § 46-1101 et seq.
Illinois: 20 ILCS 1807/0.01 et seq.
Kansas: K.S.A. § 48-2101 et seq.
Kentucky: KRS § 35.010 et seq.
Louisiana: La. R.S. § 29:101 et seq.
Maine: 37-B M.R.S. § 401 et seq.
Massachusetts: ALM GL ch. 33A, Pt. I, Art. 1 et seq.
Nebraska: R.R.S. Neb. § 55-401 et seq.
Nevada: Nev. Rev. Stat. Ann. § 412.196 et seq.
New Mexico: N.M. Stat. Ann. § 20-12-1 et seq.
New York: NY CLS Mil § 130.1 et seq.
Ohio: ORC Ann. 5924.01 et seq.

Oregon: ORS § 398.002 et seq.

South Carolina: S.C. Code Ann. § 25-1-10 et seq.

South Dakota: S.D. Codified Laws § 33-10-20 et seq.

Tennessee: Tenn. Code Ann. §§ 58-1-101 through 58-1-236 and 58-1-401 through 58-1-634.

Texas: Tex. Gov't Code § 432.001 et seq.

Washington: Rev. Code Wash. (ARCW) § 38.38.004 et seq.

West Virginia: W. Va. Code § 15-1E-1 et seq.

Federal Aspects— United States Uniform Code of Military Justice, see 10 USCS §§ 801 et seq.

JUDICIAL DECISIONS

1. In general.

Governor is Commander-in-Chief of Mississippi National Guard. Farmer v. Mabus, 940 F.2d 921, 1991 U.S. App. LEXIS 19229 (5th Cir. 1991), cert. denied, 502 U.S. 1058, 112 S. Ct. 935, 117 L. Ed. 2d 107, 1992 U.S. LEXIS 487 (U.S. 1992).

Mississippi National Guard is composed of its headquarters staff and both Mississippi Army National Guard and Mississippi Air National Guard. Farmer v. Mabus, 940 F.2d 921, 1991 U.S. App. LEXIS 19229 (5th Cir. 1991), cert. denied, 502 U.S. 1058, 112 S. Ct. 935, 117 L. Ed. 2d 107, 1992 U.S. LEXIS 487 (U.S. 1992).

RESEARCH REFERENCES

Law Reviews.

Southwick, Military Justice for Foreign Terrorists and for American Soldiers: Comparisons and a Mississippi Precedent, 72 Miss. L.J. 781, Winter, 2002.

Separation of Powers at the State Level, Part II: Service in a Civilian Public Office and in the National Guard, 74 Miss. L.J. 47, Fall, 2004.

§ 33-13-3. Repealed.

Repealed by Laws, 1989, ch. 473, § 12, eff from and after July 1, 1989.

§ 33-13-3. [Codes, 1942, § 8529-02; Laws, 1966, ch. 538, § 2; Laws, 1981, ch. 362, § 2]

Editor's Notes — Former § 33-13-3 set out persons subject to the provisions of this chapter. For current provisions, see § 33-13-7.

§ 33-13-5. Concurrent jurisdiction with civilian courts.

This code shall constitute concurrent jurisdiction with appropriate civilian courts over offenses in punitive Sections 33-13-451 through 33-13-465 and 33-13-467 through 33-13-529. Any other crimes defined by statute or existing at common law may be prosecuted by proper authorities as authorized by law.

HISTORY: Former § 33-13-5 [Codes, 1942, § 8529-03; Laws, 1966, ch. 538, § 3] recodified as § 33-13-9 by Laws, 1981, ch. 362, § 5. Section 33-13-5 enacted by Laws, 1981, ch. 362, § 3; Laws, 1989, ch. 473, § 4, eff from and after July 1, 1989.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected a reference in this section. The letter "(a)" was deleted from the end of the reference to "33-13-465." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Cross References — Jurisdiction of courts-martial, see § 33-13-161.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 237-240.

§ 33-13-7. Persons subject to code.

(1) This code applies to all members of the state military forces who are not in active federal service of the United States.

(2) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the state military forces shall be valid for purposes of jurisdiction under subsection (1) of this section and a change of status from civilian to member of the state military forces shall be effective upon taking the oath of enlistment.

(3) Notwithstanding any other provision of law, a person serving with the state military forces who:

(a) Submitted voluntarily to military authority;

(b) Met the mental competency and minimum age qualifications (10 USCS Sections 504 and 505) at the time of voluntary submission to military authority;

(c) Received military pay or allowances; and

(d) Performed military duties;

is subject to this code until such person's service has been terminated in accordance with law or regulations.

HISTORY: Former § 33-13-3 [Codes, 1942, § 8529-02; Laws, 1966, ch. 538, § 2] amended and recodified as § 33-13-7 by Laws, 1981, ch. 362, § 4, eff from and after July 1, 1981. Former 33-13-7 recodified as § 33-13-11.

Cross References — Contract and oath of enlistment, see § 33-7-203.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 247.

§ 33-13-9. Jurisdiction to try certain personnel.

(1) Each person separated from the state military forces who committed offenses while subject to this code, before such separation, and who later returned to the status of a person subject to this code, is subject to trial by court-martial for all offenses under this code committed before separation, including fraudulent discharge.

(2) No person who has deserted from state military forces may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service.

HISTORY: Former § 33-13-5 [Codes, 1942, § 8529-03; Laws, 1966, ch. 538, § 3] amended and recodified as § 33-13-9 by Laws, 1981, ch. 362, § 5, eff from and after July 1, 1981. Former § 33-13-9 recodified as § 33-13-13.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 222.

§ 33-13-11. Dismissal of commissioned officer.

(1) If any commissioned officer, dismissed by order of the Governor, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the Governor, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused he shall retain his status in the Mississippi military forces.

(2) If the Governor fails to convene a general court-martial within three (3) months from the presentation of an application for trial under this code, the Adjutant General of Mississippi, or his designee, acting on behalf of the Governor, shall substitute for the dismissal ordered by the Governor a form of discharge authorized for administrative issue.

(3) If a discharge is substituted for a dismissal under this code, the Governor alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the Governor, that former officer would have attained had he not been dismissed. The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization. All time between the dismissal and the reappointment shall be considered as actual service for all purposes.

(4) If an officer is discharged from the state military forces by administrative action or by board proceedings under law, he has no right to trial under this section.

HISTORY: Former § 33-13-7 [Codes, 1942, § 8529-04; Laws, 1966, ch. 538, § 4] amended and recodified as § 33-13-11 by Laws, 1981, ch. 362, § 6, eff from and after July 1, 1981. Former § 33-13-11 recodified as § 33-13-15.

Cross References — Courts-martial jurisdiction, see §§ 33-13-151 through 33-13-161.

Courts-martial jurisdiction, see §§ 33-13-151 through 33-13-161.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 179-183, 185-189.

§ 33-13-13. Territorial applicability of code.

(1) This code applies throughout the state. It also applies to all persons otherwise subject to this code while they are serving outside the state in the same manner and to the same extent as if they were serving inside the state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the state, with the same jurisdiction and power as to persons subject to this code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

HISTORY: Former § 33-13-9 [Codes, 1942, § 8529-05; Laws, 1966, ch. 538, § 5] amended and recodified as § 33-13-13 by Laws, 1981, ch. 362, § 7, eff from and after July 1, 1981.

Cross References — Courts of inquiry, see § 33-13-601.

§ 33-13-15. Judge advocates and legal officers.

(1) The Adjutant General shall appoint an officer of the state military forces as state judge advocate. To be eligible for appointment, an officer must have been a member of the bar of a federal court and of the Supreme Court of the State of Mississippi for at least five (5) years, and a member of the judge advocate general corps for at least five (5) years.

(2) The Adjutant General shall appoint judge advocates and legal officers upon recommendation of the state judge advocate. To be eligible for appointment, judge advocates or legal officers must be officers of the state military forces and members of the bar of a federal court and the Supreme Court of the State of Mississippi.

(3) The state judge advocate or his assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(4) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocates or legal officers of any command are entitled to communicate directly with the staff judge advocates or legal officers of a superior or subordinate command, or with the state judge advocate.

(5) No person who has acted as a member, military judge, trial counsel or investigating officer, or who has been a witness for either the prosecution or defense in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case.

HISTORY: Former § 33-13-11 [Codes, 1942, § 8529-06; Laws, 1966, ch. 538, § 6]

amended and recodified as § 33-13-15 by Laws, 1981, ch. 362, § 8, eff from and after July 1, 1981.

Cross References — Consultation with counsel having qualifications prescribed by this section in event of nonjudicial punishment by commanding officer, see § 33-13-31.

Necessity for presence of counsel having qualifications prescribed in subsection (2) of this section to represent accused in certain circumstances, see §§ 33-13-155, 33-13-157.

ARTICLE 3.

APPREHENSION AND RESTRAINT.

Sec.
33-13-17. Apprehension.
33-13-19. Apprehension of deserters.
33-13-21. Imposition of restraint.
33-13-23. Restraint of persons charged with offenses; confinement in civilian institutions.
33-13-25. Reports and receiving of prisoners.
33-13-27. Punishment prohibited before trial.
33-13-29. Delivery of offenders to civil authorities.

§ 33-13-17. Apprehension.

(1) Apprehension is the taking of a person into custody.

(2) Any commissioned officer, warrant officer, noncommissioned officer or military policeman when in the execution of his guard or police duties, any marshal of a court-martial appointed pursuant to the provisions of this code, any peace officer having authority to apprehend offenders under the laws of the United States or of this state, or any other person charged with law enforcement functions who is designated by the Adjutant General of the State of Mississippi, is authorized to apprehend persons subject to this code upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(3) Commissioned officers, warrant officers and noncommissioned officers have authority to quell quarrels, frays and disorders among persons subject to this code and to apprehend persons subject to this code who take part therein.

HISTORY: Former § 33-13-51 [Codes, 1942, § 8529-07; Laws, 1966, ch. 538, § 7] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-17 by Laws, 1981, ch. 362, § 10, eff from and after July 1, 1981.

Cross References — Definition of terms used in this chapter, see § 33-13-1.

Federal Aspects— Apprehension and restraint under Uniform Code of Military Justice, see §§ 807 through 814.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 264.

§ 33-13-19. Apprehension of deserters.

Any civil officer or peace officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth or possession, or the District of Columbia, may summarily apprehend a deserter from the state military forces.

HISTORY: Former § 33-13-53 [Codes, 1942, § 8529-08; Laws, 1966, ch. 538, § 8] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-19 by Laws, 1981, ch. 362, § 11, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 264.

§ 33-13-21. Imposition of restraint.

(1) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within specified limits. Confinement is the physical restraint of a person.

(2) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons. A commanding officer may authorize warrant officers, or noncommissioned officers to order enlisted members of his company or subject to his authority into arrest or confinement.

(3) A commissioned officer or warrant officer may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(4) No person may be ordered into arrest or confinement except for probable cause.

(5) This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until a proper authority may be notified.

HISTORY: Former § 33-13-55 [Codes, 1942, § 8529-09; Laws, 1966, ch. 538, § 9] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-21 by Laws, 1981, ch. 362, § 12, eff from and after July 1, 1981.

Cross References — Execution of confinement after trial, see § 33-13-357.

OPINIONS OF THE ATTORNEY GENERAL

A National Guard Unit Commander has the authority to issue a warrant to arrest an active duty enlisted member, and the warrant may be acted upon as if it was a warrant from another jurisdiction; the defendant should be arrested and may be turned over directly to military personnel or processed through the county jail with notification to the military officer who issued the warrant. Blackson, Nov. 16, 2001, A.G. Op. #01-0640.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 264.

§ 33-13-23. Restraint of persons charged with offenses; confinement in civilian institutions.

Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement as circumstances may require; but when charged with only an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement unless a threat to himself or others. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him. Persons confined other than in a guardhouse, whether before, during or after trial by a military court, shall be confined in civil institutions designated by the Adjutant General.

HISTORY: Former § 33-13-57 [Codes, 1942, § 8529-10; Laws, 1966, ch. 538, § 10] and § 33-13-59 [Codes, 1942, § 8529-11; Laws, 1966, ch. 538, § 11] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-23 by Laws, 1981, ch. 362, § 13, eff from and after July 1, 1981.

Cross References — Duty of persons in charge of places for confinement of prisoners to receive and keep prisoners and to make prompt reports of reception of prisoners, see § 33-13-25.

Execution of confinement after trial, see § 33-13-357.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 264.

§ 33-13-25. Reports and receiving of prisoners.

(1) No provost marshal, commander of a guard, master-at-arms, warden, keeper, or officer of a municipal or county jail or any other jail, designated under Section 33-13-23, may refuse to receive or keep any prisoner committed to his charge, when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(2) Every commander of a guard, master-at-arms, warden, keeper or

officer of a municipal or county jail or of any other jail, designated under Section 33-13-23, to whose charge a prisoner is committed shall, within twenty-four (24) hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner or the Adjutant General the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment, and such report shall be entered on the jail docket.

HISTORY: Former § 33-13-61 [Codes, 1942, § 8529-12; Laws, 1966, ch. 538, § 12] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-25 by Laws, 1981, ch. 362, § 14, eff from and after July 1, 1981.

Cross References — Execution of confinement after trial, see § 33-13-357.

§ 33-13-27. Punishment prohibited before trial.

Subject to Section 33-13-355, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

HISTORY: Former § 33-13-63 [Codes, 1942, § 8529-13; Laws, 1966, ch. 538, § 13] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-27 by Laws, 1981, ch. 362, § 15, eff from and after July 1, 1981.

§ 33-13-29. Delivery of offenders to civil authorities.

(1) Under such regulations as may be prescribed under this code, a person subject to this code who is on active duty who is accused of an offense against civil authority shall be delivered, upon request, to the civil authority for trial.

(2) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial; and the offender, after having answered to the civil authorities for his offense, shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

HISTORY: Former § 33-13-65 [Codes, 1942, § 8529-14; Laws, 1966, ch. 538, § 14] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-29 by Laws, 1981, ch. 362, § 16, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 264, 314 et seq.

ARTICLE 5.

NONJUDICIAL PUNISHMENT.

Sec.
33-13-31. Commanding officer's nonjudicial punishment.
33-13-51 through 33-13-65. Repealed.
33-13-101. Repealed.

§ 33-13-31. Commanding officer's nonjudicial punishment.

(1) Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, and the categories of commanding officers and warrant officers exercising command authorized to exercise those powers. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Governor, the Governor or an officer of general rank in command may delegate his powers under this section to a principal assistant. If disciplinary punishment other than admonition or reprimand is to be imposed, the accused shall be afforded the opportunity to consult with counsel having the qualifications prescribed under Section 33-13-15(2), Mississippi Code of 1972, if available. Otherwise, the accused shall be afforded the opportunity to be represented by any available commissioned officer of his choice. The accused may also employ civilian counsel of his own choosing at his own expense. In all proceedings, the accused is allowed forty-eight (48) hours, or longer on written justification, to reply to the notification of intent to impose punishment under this section.

(2) Subject to subsection (1) of this section, any commanding officer or the Commandant of the Mississippi Military Academy may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses:

(a) Upon officers of his command:

(i) Restriction to certain specified limits with or without suspension from duty, for not more than thirty (30) days;

(ii) If imposed by the Governor, or an officer of general rank in command:

1. Arrest in quarters for not more than thirty (30) days;
2. A fine of not more than Two Hundred Twenty-five Dollars ($225.00), subject to such limitations as may be imposed by federal law;
3. Restriction to certain specified limits, with or without suspension from duty, for not more than sixty (60) days;

4. Detention of not more than one-half (1/2) of one (1) month's pay per month for three (3) months.

(b) Upon other personnel of his command:

(i) If imposed upon a person attached to or embarked in a vessel, confinement for not more than three (3) days;

(ii) Correctional custody for not more than seven (7) days;

(iii) A fine of not more than One Hundred Seventy-five Dollars ($175.00), subject to such limitations as may be imposed by federal law;

(iv) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(v) Extra duties including fatigue or other duties, for not more than thirty (30) days, which need not be consecutive, and for not more than two (2) hours per day, holidays included;

(vi) Restriction to certain specified limits, with or without suspension from duty for not more than thirty (30) days;

(vii) Detention of not more than fourteen (14) days' pay;

(viii) If imposed by an officer of the grade of major or above:

1. The punishment authorized under subsection (2)(b)(i) of this section;

2. Correctional custody for not more than thirty (30) days;

3. A fine of not more than Two Hundred Twenty-five Dollars ($225.00), subject to such limitations as may be imposed by federal law;

4. Reduction to the lowest or any intermediate pay grade if the grade from which demoted is within the promotion authority of the officer imposing the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two (2) pay grades;

5. Extra duties including fatigue or other duties, for not more than forty-five (45) days which need not be consecutive and for not more than two (2) hours per day, holidays included;

6. Restriction to certain specified limits with or without suspension from duty, for not more than sixty (60) days;

7. Detention of not more than one-half (1/2) of one (1) month's pay per month for three (3) months.

Detention of pay shall be for a stated period of not more than one (1) year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two (2) or more of the punishments of arrest in quarters, correctional custody, extra duties and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. For the purpose of this subsection, "correctional custody" is the physical restraint of a person during nonduty hours and may include extra duties, fatigue duties or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(3)(a) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (2)(b)(i)-(vii) of this section as the Governor may specifically prescribe by regulation.

(b) The Commandant of the Mississippi Military Academy may impose upon officers of which he is in charge such of the punishments authorized under subsection (2)(a)(i) of this section.

(4) The officer who imposes the punishment authorized in subsection (2) or his successor in command may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or fine imposed under subsection (2), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside, in whole or in part, the punishment, whether executed or unexecuted, and restore all rights, privileges and property affected. He may also mitigate reduction in grade to a fine and/or detention of pay.

When mitigating (a) arrest in quarters or restriction, or (b) extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated.

When mitigating reduction in grade to a fine and/or detention of pay, the amount of the fine and/or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(5) A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may, in the meantime, be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (4) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

(a) Arrest in quarters for more than seven (7) days;

(b) Correctional custody for more than seven (7) days;

(c) A fine of Two Hundred Twenty-five Dollars ($225.00);

(d) Reduction of one or more pay grades from the fourth or a higher pay grade;

(e) Extra duties for more than fourteen (14) days' pay;

(f) Restriction of more than fourteen (14) days' pay;

(g) Detention of more than fourteen (14) days' pay; the authority who is to act on the appeal shall refer the case to a judge advocate of the state military forces for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2).

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section, but the fact that disciplinary punish-

ment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

HISTORY: Former § 33-13-101 [Codes, 1942, § 8529-15; Laws, 1966, ch. 538, § 15] repealed by Laws, 1981, ch. 362, § 102; Laws, 2011, ch. 352, § 1, eff from and after July 1, 2011; Laws, 2019, ch. 407, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (2)(a), redesignated (a)(ii)A through D as (a)(ii)1 through 4, and in (a)(ii)2, substituted "Two Hundred Twenty-five dollars ($225.00)" for "Seventy-five Dollars ($75.00)"; in (2)(b), substituted "One Hundred Seventy-five Dollars ($175.00)" for "Ten Dollars ($10.00)" in (b)(iii), redesignated (b)(viii)(A) through (G) as (b)(viii)1 through 7, and in 3, substituted "Two Hundred Twenty-five dollars ($225.00)" for "Seventy-five Dollars ($75.00)"; and substituted "Two Hundred Twenty-five dollars ($225.00)" for "Seventy-five Dollars ($75.00)" in (5)(c).

Cross References — Definition of terms used in this chapter, see § 33-13-1.

Courts-martial jurisdiction, see §§ 33-13-151 through 33-13-161.

Federal Aspects— Non-judicial punishment under Uniform Code of Military Justice, see 10 USCS § 815.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 218-220.

§§ 33-13-51 through 33-13-65. Repealed.

Repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981.
§ 33-13-51. [Codes, 1942, § 8529-07; Laws, 1966, ch. 538, § 7]
§ 33-13-53. [Codes, 1942, § 8529-08; Laws, 1966, ch. 538, § 8]
§ 33-13-55. [Codes, 1942, § 8529-09; Laws, 1966, ch. 538, § 9]
§ 33-13-57. [Codes, 1942, § 8529-10; Laws, 1966, ch. 538, § 10]
§ 33-13-59. [Codes, 1942, § 8529-11; Laws, 1966, ch. 538, § 11]
§ 33-13-61. [Codes, 1942, § 8529-12; Laws, 1966, ch. 538, § 12]
§ 33-13-63. [Codes, 1942, § 8529-13; Laws, 1966, ch. 538, § 13]
§ 33-13-65. [Codes, 1942, § 8529-14; Laws, 1966, ch. 538, § 14]

Editor's Notes — Former §§ 33-13-51 through 33-13-65 related to apprehension and restraint. For current provisions, see §§ 33-13-17 through 33-13-29.

§ 33-13-101. Repealed.

Repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981.
§ 33-13-101. [Codes, 1942, § 8529-15; Laws, 1966, ch. 538, § 15]

Editor's Notes — Former § 33-13-101 provided for commanding officer's nonjudicial punishment. For current provisions, see § 33-13-31.

ARTICLE 7.

COURTS-MARTIAL JURISDICTION.

Sec.

33-13-151. Courts-martial classified; composition.
33-13-153. Jurisdiction of courts-martial in general.
33-13-155. Jurisdiction of general courts-martial.
33-13-157. Jurisdiction of special courts-martial.
33-13-159. Jurisdiction of summary courts-martial.
33-13-161. Jurisdiction of courts-martial not exclusive.
33-13-163. Repealed.

§ 33-13-151. Courts-martial classified; composition.

The three (3) kinds of courts-martial in each of the state military forces are:

(a) General court-martial consisting of:

(i) A military judge and not less than six (6) members; or

(ii) Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed of a military judge and the military judge approves;

(b) Special court-martial, consisting of:

(i) Not less than three (3) members; or

(ii) A military judge and not less than three (3) members; or

(iii) Only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in paragraph (a)(ii) so requests; and

(c) Summary court-martial, consisting of one (1) commissioned officer in the grade of major or above, who shall be a military judge licensed to practice law in this state, or a judge advocate licensed to practice law in this state.

HISTORY: Codes, 1942, § 8529-16; Laws, 1966, ch. 538, § 16; Laws, 1981, ch. 362, § 19; Laws, 2017, ch. 354, § 1, eff from and after July 1, 2017.

Cross References — Definition of terms used in this chapter, see § 33-13-1.

Jurisdiction of general courts-martial, see § 33-13-155.

Jurisdiction of special courts-martial, see § 33-13-157.

Jurisdiction of summary courts-martial, see § 33-13-159.

Applicability of this section where military judge is unable to proceed, see § 33-13-189.

Federal Aspects— Courts-martial jurisdiction under Uniform Code of Military Justice, see §§ 816 through 821.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 221 et seq.

45 Am. Jur. Trials 351, Court-Martial Defense by the Nonmilitary Lawyer.

§ 33-13-153. Jurisdiction of courts-martial in general.

Each force of the state military forces has court-martial jurisdiction over all persons subject to this code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the Governor.

HISTORY: Codes, 1942, § 8529-17; Laws, 1966, ch. 538, § 17, eff from and after June 1, 1966.

Cross References — Effect of this section on jurisdiction of general courts-martial, special courts-martial, and summary courts-martial, see §§ 33-13-155, 33-13-157 and 33-13-159.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 221 et seq., 238

§ 33-13-155. Jurisdiction of general courts-martial.

(1) Subject to Section 33-13-153, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may under such limitations as the Governor may prescribe, adjudge any of the following punishments:

(a) A fine of not more than Two Thousand Dollars ($2,000.00) and/or confinement for not more than six (6) months, and/or forfeiture of all pay and/or allowances;

(b) A reprimand; or

(c) A bad conduct discharge; or

(d) Dismissal or a dishonorable discharge; or

(e) Reduction of enlisted personnel to lowest pay grade; or

(f) Any combination of these punishments.

(2) A dismissal, a bad conduct, or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under Section 33-13-15(2) was detailed to represent the accused, and a military judge was detailed to the trial.

HISTORY: Codes, 1942, § 8529-18; Laws, 1966, ch. 538, § 18; Laws, 1981, ch. 362, § 20; Laws, 2016, ch. 404, § 1, eff from and after July 1, 2016; Laws, 2020, ch. 345, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1)(a), substituted "and/or confinement" for "or confinement" and added "and/or forfeiture of all pay and/or allowances."

Cross References — Jurisdiction of courts-martial in general, see § 33-13-153.

Jurisdiction of special courts-martial, see § 33-13-157.

Jurisdiction of summary courts-martial, see § 33-13-159.

Who may convene general courts-martial, see § 33-13-175.

Who may serve on general courts-martial, see § 33-13-181.

Appellate jurisdiction of Mississippi Court of Military Appeals to hear and review the record in all general court-martial cases, see § 33-13-417.

Payment of fines and costs imposed by general court-martial, see § 33-13-617.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 221 et seq, 238.

§ 33-13-157. Jurisdiction of special courts-martial.

(1) Subject to Section 33-13-153, special courts-martial have jurisdiction to try persons subject to this code, except commissioned officers, for any offense for which they may be punished under this code. A special court-martial has the same powers or punishment as a general court-martial, except:

(a) A fine of not more than One Thousand Dollars ($1,000.00), and/or confinement of not more than one hundred (100) days for a single offense, and/or forfeiture of all pay and/or allowances.

(b) A dishonorable discharge may not be imposed.

(2) A dismissal of a warrant officer or a bad conduct discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under Section 33-13-15(2) was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

HISTORY: Codes, 1942, § 8529-19; Laws, 1966, ch. 538, § 19; Laws, 1981, ch. 362, § 21; Laws, 2016, ch. 404, § 2, eff from and after July 1, 2016; Laws, 2020, ch. 345, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1)(a), substituted "and/or confinement" for "or confinement" and added "and/or forfeiture of all pay and/or allowances."

Cross References — Jurisdiction of courts-martial in general, see § 33-13-153.

Jurisdiction of general courts-martial, see § 33-13-155.

Jurisdiction of summary courts-martial, see § 33-13-159.

Who may convene special courts-martial, see § 33-13-177.

Who may serve on special courts-martial, see § 33-13-181.

Appellate jurisdiction of Mississippi Court of Military Appeals to hear and review the record in all general court-martial cases, see § 33-13-417.

Payment of fines and costs imposed by special court martial, see § 33-13-617.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 221 et seq., 238

§ 33-13-159. Jurisdiction of summary courts-martial.

(1) Subject to Section 33-13-153, summary courts-martial have jurisdiction to try persons subject to this code, except officers, for any offense made punishable by this code.

(2) Any person given notice of trial by a summary courts-martial may request trial before a special or general courts-martial. The decision to grant this request is reserved to the special or general court-martial convening authority, respectively.

(3) The maximum sentence a summary courts-martial may impose for a single offense is:

(a) A fine of not more than Two Hundred Fifty Dollars ($250.00), and/or forfeiture of all pay and/or allowances;

(b) Reduction to the lowest or any intermediate pay grade, but an enlisted member in a pay grade above E-4 may not be reduced more than four (4) pay grades;

(c) Confinement for not more than thirty (30) days;

(d) Forfeiture of all pay and allowances for any period of confinement;

(e) If found to have willfully or maliciously caused any injury to any person or property, restitution in an amount of Three Thousand Five Hundred Dollars ($3,500.00) or less; and

(f) Any punishment authorized in Section 33-13-31.

(4) Any person given notice of a trial by a summary courts-martial who fails to appear at trial may be tried, convicted and sentenced in absentia.

HISTORY: Codes, 1942, § 8529-20; Laws, 1966, ch. 538, § 20; Laws, 1981, ch. 362, § 22; Laws, 2016, ch. 404, § 3; Laws, 2017, ch. 354, § 2, eff from and after July 1, 2017; Laws, 2019, ch. 408, § 1, eff from and after July 1, 2019; Laws, 2020, ch. 345, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2019 amendment inserted "special or" and "respectively" in the last sentence of (2).

The 2020 amendment, in (3)(a), added "and/or forfeiture of all pay and/or allowances."

Cross References — Jurisdiction of courts-martial in general, see § 33-13-153.

Jurisdiction of general courts-martial, see § 33-13-155.

Jurisdiction of special courts-martial, see § 33-13-157.

Who may convene summary courts-martial, see § 33-13-179.

Payment of fines and costs imposed by special court martial, see § 33-13-617.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 221 et seq., 238.

§ 33-13-161. Jurisdiction of courts-martial not exclusive.

The provisions of this article conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts or other military tribunals.

HISTORY: Codes, 1942, § 8529-21; Laws, 1966, ch. 538, § 21; Laws, 1981, ch. 362, § 23, eff from and after July 1, 1981.

Cross References — For another provision regarding exclusivity of jurisdiction, see § 33-13-5.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 221 et seq., 238.

§ 33-13-163. Repealed.

Repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981.
§ 33-13-163. [Codes, 1942, § 8529-22; Laws, 1966, ch. 538, § 22]

Editor's Notes — Former § 33-13-163 required a complete record of proceedings and testimony if dishonorable or dismissal be adjudged. For current provisions, see § 33-13-155(2).

ARTICLE 9.

APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL.

Sec.
33-13-175. Who may convene general courts-martial.
33-13-177. Who may convene special courts-martial.
33-13-179. Who may convene summary courts-martial.
33-13-181. Who may serve on courts-martial.
33-13-183. Military judge of a court-martial.
33-13-185. Detail of trial counsel and defense counsel.
33-13-187. Detail or employment of reporters and interpreters.
33-13-189. Absent and additional members.
33-13-201 through 33-13-215. Repealed.

§ 33-13-175. Who may convene general courts-martial.

In the state military forces not in federal service, general courts-martial may be convened by:

(a) The Governor of the State of Mississippi; or
(b) The Adjutant General; or

(c) Any other general officer under such regulations as the Governor may promulgate.

HISTORY: Former § 33-13-201 [Codes, 1942, § 8529-23; Laws, 1966, ch. 538, § 23] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-175 by Laws, 1981, ch. 362, § 25, eff from and after July 1, 1981.

Cross References — Definition of terms used in this chapter, see § 33-13-1.
Jurisdiction of general courts-martial, see § 33-13-155.
Who may serve on general courts-martial, see § 33-13-181.
Convening court of inquiry by persons authorized to convene general courts-martial, see § 33-13-601.
Delegation of authority by the Governor, see § 33-13-611.
Federal Aspects— Composition of courts-martial, see 10 USCS §§ 822 through 829.

JUDICIAL DECISIONS

1. In general.

This section confers upon Governor authority to convene general court-martial. Formal investigation must be completed before court-martial charges may be preferred. Farmer v. Mabus, 940 F.2d 921, 1991 U.S. App. LEXIS 19229 (5th Cir. 1991), cert. denied, 502 U.S. 1058, 112 S. Ct. 935, 117 L. Ed. 2d 107, 1992 U.S. LEXIS 487 (U.S. 1992).

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 225.

§ 33-13-177. Who may convene special courts-martial.

In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base or other place where troops are on duty, or of a division, brigade, regiment, wing, group, battalion, separate squadron, or other detached command, may convene special court-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court may be convened by superior competent authority if considered advisable by him.

HISTORY: Former § 33-13-203 [Codes, 1942, § 8529-24; Laws, 1966, ch. 538, § 24] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-177 by Laws, 1981, ch. 362, § 26, eff from and after July 1, 1981.

Cross References — Jurisdiction of special courts-martial, see § 33-13-157.
Who may serve on special courts-martial, see § 33-13-181.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 225.

§ 33-13-179. Who may convene summary courts-martial.

In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or of a regiment, wing, group, battalion, detached squadron, or detached company or higher command, may convene a summary court-martial.

HISTORY: Former § 33-13-205 [Codes, 1942, § 8529-25; Laws, 1966, ch. 538, § 25] repealed by Laws, 1981, ch. 362, § 102; Laws, 2017, ch. 354, § 3, eff from and after July 1, 2017.

Cross References — Jurisdiction of summary courts-martial, see § 33-13-159.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 225.

§ 33-13-181. Who may serve on courts-martial.

(1) Any commissioned officer of the state military forces in a duty status is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(2) Any warrant officer of the state military forces in a duty status is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(3)(a) Any enlisted member of the state military forces in a duty status who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of the state military forces who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under Section 33-13-207 [repealed] prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third (⅓) of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(b) In this subsection, the word "unit" means any regularly organized body of the state military forces comparable to company size.

(4)(a) When it can be avoided no person subject to this code may be tried by a court-martial any member of which is junior to him in rank or grade.

(b) When convening a court-martial, the convening authority shall detail as members thereof such members of the state military forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service and judicial temperament. No member of the state military forces is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

HISTORY: Former § 33-13-207 [Codes, 1942, § 8529-26; Laws, 1966, ch. 538, § 26] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-181 by Laws, 1981, ch. 362, § 28, eff from and after July 1, 1981.

Editor's Notes — Section 33-13-207, referred to in (3)(a), was repealed by Laws of 1981, ch. 362, § 102, effective from and after July 1, 1981.

Cross References — Jurisdiction of general courts-martial, see § 33-13-155.
Jurisdiction of special courts-martial, see § 33-13-157.
Jurisdiction of summary courts-martial, see § 33-13-159.
Who may convene general courts-martial, see § 33-13-175.
Who may convene special courts-martial, see § 33-13-177.
Who may convene summary courts-martial, see § 33-13-179.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 227, 229.

§ 33-13-183. Military judge of a court-martial.

(1) The authority convening a general or special court-martial shall, and subject to regulations issued by the Governor, the authority convening a summary court-martial may, detail a military judge. A military judge or a summary court officer shall preside over open sessions of the court-martial to which he has been detailed and shall be the approving authority over all pleas.

(2) A military judge shall be a commissioned officer of the state military forces who is a member of the Judge Advocate General Corps, a member of the bar of a federal court and a member of the bar of the Supreme Court of the State of Mississippi and who is certified to be qualified for duty as a military judge by the State Judge Advocate of the state military forces. Any military judge qualified pursuant to 10 USCS 826 may be considered a military judge herein upon determination of need by the Adjutant General of the State of Mississippi.

(3) The military judge of a general court-martial shall be designated by the State Judge Advocate, or his designee, for detail by the convening authority and, unless the court-martial was convened by the Governor or the Adjutant General, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge.

(4) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(5) The military judge of a court-martial may not consult with the members of the court except in the presence of the trial counsel and defense counsel, nor may he vote with the members of the court in a panel case.

(6) A military judge detailed to preside over a court-martial hereunder shall not be subject to any report by the convening authority or any member of his staff concerning the effectiveness, fitness or efficiency of that military judge so detailed, which relates to his performance of duty as a military judge.

(7) All trial counsel, defense counsel, military judges, legal officers, summary court officers and any other person certified by the State Judge Advocate to perform legal functions under this code, shall be used interchangeably, as needed, among all of the state military forces.

HISTORY: Former § 33-13-209 [Codes, 1942, § 8529-27; Laws, 1966, ch. 538, § 27] repealed by Laws, 1981, ch. 362, § 102; Laws, 2017, ch. 354, § 4, eff from and after July 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in subsection (2) by substituting "10 USCS 826" for "18 USCS 826." The Joint Committee ratified the corrections at its October 19, 2020, meeting.

Editor's Notes — The reference to "18 USCS 826" in (2) should probably be to "10 USCS 826."

Cross References — Definition of military judge, see § 33-13-1.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 228.

§ 33-13-185. Detail of trial counsel and defense counsel.

(1) For each general, special and summary court-martial, the authority convening the court shall detail trial counsel and defense counsel and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge or court member in any case may act later as trial counsel, assistant trial counsel or, unless expressly requested by the accused, as defense counsel, or assistant defense counsel in the same case. No person

who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(2) Trial counsel and defense counsel detailed for any court-martial:

(a) Must be licensed to practice law in the State of Mississippi; and

(b) Must be certified as competent to perform such duties by the State Judge Advocate.

HISTORY: Former § 33-13-185 [Codes, 1942, § 8529-28; Laws, 1966, ch. 538, § 28] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-185 by Laws, 1981, ch. 362, § 30; Laws, 1989, ch. 473, § 7, eff from and after July 1, 1989.

Cross References — Who may convene general courts-martial, see § 33-13-175.

Who may convene special courts-martial, see § 33-13-177.

Who may convene summary courts-martial, see § 33-13-179.

Duties of trial counsel and defense counsel, and performance of duties by assistant trial or defense counsel, see § 33-13-305.

Trial counsel and defense counsel serving as appellate counsel, see § 33-13-421.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 230, 231.

§ 33-13-187. Detail or employment of reporters and interpreters.

Under such regulations as the Governor may prescribe, the convening authority of a general or special court-martial, military commission, court of inquiry, or a military tribunal shall detail or employ qualified court reporters who shall record the proceedings of and testimony taken before that court, commission or tribunal. Under like regulations, the convening authority may detail or employ interpreters who shall interpret for the court, commission or tribunal.

HISTORY: Former § 33-13-213 [Codes, 1942, § 8529-29; Laws, 1966, ch. 538, § 29] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-187 by Laws, 1981, ch. 362, § 31, eff from and after July 1, 1981.

Cross References — Appointment of interpreter for the deaf in judicial proceedings and custodial situations, see §§ 13-1-301 et seq.

Who may convene general courts-martial, see § 33-13-175.

Who may convene special courts-martial, see § 33-13-177.

Who may convene summary courts-martial, see § 33-13-179.

§ 33-13-189. Absent and additional members.

(1) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except

for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(2) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below six (6) members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than six (6) members. The trial may proceed with the new members present after the recorded evidence previously introduced has been read to the court in the presence of the military judge, the accused and counsel for both sides.

(3) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three (3) members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three (3) members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(4) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of Section 33-13-151, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

HISTORY: Former § 33-13-215 [Codes, 1942, § 8529-30; Laws, 1966, ch. 538, § 30] repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981, amended and recodified as § 33-13-189 by Laws, 1981, ch. 362, § 32, eff from and after July 1, 1981.

§§ 33-13-201 through 33-13-215. Repealed.

Repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981.
§ 33-13-201. [Codes, 1942, § 8529-23; Laws, 1966, ch. 538, § 23]
§ 33-13-203. [Codes, 1942, § 8529-24; Laws, 1966, ch. 538, § 24]
§ 33-13-205. [Codes, 1942, § 8529-25; Laws, 1966, ch. 538, § 25]
§ 33-13-207. [Codes, 1942, § 8529-26; Laws, 1966, ch. 538, § 26]
§ 33-13-209. [Codes, 1942, § 8529-27; Laws, 1966, ch. 538, § 27]
§ 33-13-211. [Codes, 1942, § 8529-28; Laws, 1966, ch. 538, § 28]
§ 33-13-213. [Codes, 1942, § 8529-29; Laws, 1966, ch. 538, § 29]
§ 33-13-215. [Codes, 1942, § 8529-30; Laws, 1966, ch. 538, § 30]

Editor's Notes — Former §§ 33-13-201 through 33-13-215 related to appointment and composition of courts-martial. For current provisions, see §§ 33-13-175 through 33-13-189.

ARTICLE 11.

PRE-TRIAL PROCEDURE.

Sec.
33-13-251. Charges and specifications.
33-13-253. Compulsory self-incrimination prohibited.
33-13-255. Investigation.
33-13-257. Forwarding of charges.
33-13-259. Advice of staff judge advocate and reference for trial.
33-13-261. Service of charges.

§ 33-13-251. Charges and specifications.

(1) Charges and specifications shall be signed by a person subject to this code under oath before a commissioned officer of the state military forces authorized to administer oaths and shall state:

(a) That the signed has personal knowledge of, or has investigated the matters set forth therein; and

(b) That they are true in fact to the best of his knowledge and belief.

(2) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

HISTORY: Codes, 1942, § 8529-31; Laws, 1966, ch. 538, § 31; Laws, 1981, ch. 362, § 33, eff from and after July 1, 1981.

Cross References — Definition of terms used in this chapter, see § 33-13-1.

Signing of charges as provided in this section as condition precedent to taking of depositions, see § 33-13-327.

Federal Aspects— Pre-trial procedure under Uniform Code of Military Justice, see 10 USCS §§ 830 through 835.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 261-263.

§ 33-13-253. Compulsory self-incrimination prohibited.

(1) No person subject to this code may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(2) No person subject to this code may interrogate, or request any statement from an accused or a person suspected of any offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial, and that certified military counsel will

be detailed by competent authority, or by civilian counsel if provided by the accused or suspect.

(3) No person subject to this code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(4) No statement obtained from any person in violation of this section or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

HISTORY: Codes, 1942, § 8529-32; Laws, 1966, ch. 538, § 32; Laws, 1981, ch. 362, § 34, eff from and after July 1, 1981.

RESEARCH REFERENCES

Lawyers' Edition.

Supreme Court's views as to what comments by prosecuting attorney violate accused's privilege against self-incrimination under Federal Constitution's Fifth Amendment. 99 L. Ed. 2d 926.

§ 33-13-255. Investigation.

(1) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(2) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request, he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation, full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(3) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination and presentation prescribed in subsection (2) of this section, no further investigation of that charge is necessary under this section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(4) The requirements of this section are binding on all persons adminis-

tering this code, but failure to follow them does not constitute jurisdictional error.

HISTORY: Codes, 1942, § 8529-33; Laws, 1966, ch. 538, § 33; Laws, 1981, ch. 362, § 35, eff from and after July 1, 1981.

Cross References — Jurisdiction of general courts-martial, see § 33-13-155.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 266, 267.

§ 33-13-257. Forwarding of charges.

When a person is held for trial by general court-martial, the commanding officer shall, within eight (8) days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

HISTORY: Codes, 1942, § 8529-34; Laws, 1966, ch. 538, § 34; Laws, 1981, ch. 362, § 36, eff from and after July 1, 1981.

Cross References — Jurisdiction of general courts-martial, see § 33-13-155.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 261-263.

§ 33-13-259. Advice of staff judge advocate and reference for trial.

(1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of investigation.

(2) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and such changes in the charges and specifications as needed to make them conform to the evidence may be made.

HISTORY: Codes, 1942, § 8529-35; Laws, 1966, ch. 538, § 35; Laws, 1981, ch. 362, § 37, eff from and after July 1, 1981.

Cross References — Jurisdiction of general courts-martial, see § 33-13-155.

§ 33-13-261. Service of charges.

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace, no person may, against his objections, be brought to trial or be required to participate by himself or counsel in a session called by the military judge under Section 33-13-307(1) in a general court-martial case within a period of five (5) days after the service of charges upon him, or in a special court-martial case within a period of three (3) days after the service of charges upon him.

HISTORY: Codes, 1942, § 8529-36; Laws, 1966, ch. 538, § 36; Laws, 1981, ch. 362, § 38, eff from and after July 1, 1981.

Cross References — Jurisdiction of general courts-martial, see § 33-13-155.
Sessions; trial procedure, see § 33-13-307.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 261-263.

ARTICLE 13.

TRIAL PROCEDURE.

Sec.
33-13-301. Governor may prescribe rules.
33-13-303. Unlawfully influencing action of court.
33-13-305. Duties of trial counsel and defense counsel.
33-13-307. Sessions.
33-13-309. Continuances.
33-13-311. Challenges.
33-13-313. Oaths.
33-13-315. Statute of limitations.
33-13-317. Former jeopardy.
33-13-319. Pleas of the accused.
33-13-321. Opportunity to obtain witnesses and other evidence.
33-13-323. Refusal to appear or testify.
33-13-325. Contempts.
33-13-327. Depositions.
33-13-329. Admissibility of records of courts of inquiry.
33-13-331. Voting and rulings.
33-13-333. Number of votes required.
33-13-335. Court to announce action.
33-13-337. Record of trial.

§ 33-13-301. Governor may prescribe rules.

The pretrial, trial and post-trial procedures, including modes of proof, in cases before military courts and other military tribunals and courts of inquiry may be prescribed by the Governor by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the State of Mississippi but which may not be contrary to or inconsistent with this code.

HISTORY: Codes, 1942, § 8529-37; Laws, 1966, ch. 538, § 37; Laws, 1981, ch. 362, § 39, eff from and after July 1, 1981.

Cross References — Definition of terms used in this chapter, see § 33-13-1.

Applicability of rules to pre-trial sessions, see § 33-13-307.

Courts of inquiry, see § 33-13-601.

Delegation of authority by the Governor, see § 33-13-611.

Federal Aspects— Trial procedure under Uniform Code of Military Justice, see 10 USCS §§ 836 through 854.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 258-260, 280.

§ 33-13-303. Unlawfully influencing action of court.

(1) No authority convening a general, special or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceedings. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of this subsection shall not apply with respect to (a) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of court-martial, or (b) statements and instructions given in open court by the military judge, president of a special court-martial or counsel.

(2) In the preparation of an effectiveness, fitness or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of or in determining whether a member of the state military forces should be retained on duty, no person subject to this code may, in preparing any such report (a) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (b) give a less favorable rating or evaluation of any member of the state military forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

HISTORY: Codes, 1942, § 8529-38; Laws, 1966, ch. 538, § 38; Laws, 1981, ch. 362, § 40, eff from and after July 1, 1981.

Cross References — Who may convene general courts-martial, see § 33-13-175.
Who may convene special courts-martial, see § 33-13-177.
Who may convene summary courts-martial, see § 33-13-179.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 258-260, 280.

§ 33-13-305. Duties of trial counsel and defense counsel.

(1) The trial counsel of a general or special court-martial shall prosecute in the name of the State of Mississippi, and shall, under the direction of the court, prepare the record of the proceedings.

(2) The accused has the right to be represented in his defense before a general, special or summary court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under Section 33-13-185. Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

(3) In every court-martial proceedings, the defense counsel may, in the event of conviction, forward for attachment to the recording of proceedings, a brief of such matters he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(4) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by Section 33-13-185, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(5) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by Section 33-13-185, perform any duty imposed by law, regulation or the custom of the service upon counsel for the accused.

HISTORY: Codes, 1942, § 8529-39; Laws, 1966, ch. 538, § 39; Laws, 1981, ch. 362, § 41, eff from and after July 1, 1981.

Cross References — Detail of trial counsel and defense counsel, see § 33-13-185.
Trial counsel and defense counsel serving as appellate counsel, see § 33-13-421.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military and Civil Defense §§ 230, 231.

§ 33-13-307. Sessions.

(1) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to Section 33-13-261, call the court into session without the presence of the members for the purpose of:

(a) Hearing and determining motions raising defense or objections which are capable of determining without trial or the issue raised by a plea of not guilty;

(b) Hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(c) If permitted by regulations of the Governor, holding the arraignment and receiving the pleas of the accused; and

(d) Performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to Section 33-13-301 and which does not require the presence of the members of the court. These proceedings shall be conducted in the presence of the accused, the defense counsel and the trial counsel, and shall be made a part of the record.

(2) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel and, in cases in which a military judge has been detailed to the court, the military judge.

HISTORY: Codes, 1942, § 8529-40; Laws, 1966, ch. 538, § 40; Laws, 1981, ch. 362, § 42, eff from and after July 1, 1981.

Cross References — Prohibition against requiring an accused to participate in a pre-trial session under this section within a certain number of days after service of charges, see § 33-13-261.

§ 33-13-309. Continuances.

The military judge, or a court-martial without a military judge, may, for reasonable cause, grant a continuance to any party for such time and for as often as may appear to be just.

HISTORY: Codes, 1942, § 8529-41; Laws, 1966, ch. 538, § 41; Laws, 1981, ch. 362, § 43, eff from and after July 1, 1981.

§ 33-13-311. Challenges.

(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one (1) person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) Each accused and the trial counsel are entitled to one (1) preemptory challenge, but the military judge may not be challenged except for cause.

HISTORY: Codes, 1942, § 8529-42; Laws, 1966, ch. 538, § 42; Laws, 1981, ch. 362, § 44, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 233, 234.

§ 33-13-313. Oaths.

Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters and interpreters shall take an oath to perform their duties faithfully. The oath or affirmation shall be taken, and shall read as follows:

(a) Court members:

"You, ________, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as a member of this court; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws and regulations provided for trials by court-martial, the case of (the) (each) accused now before this court; and that you will not disclose or discover the vote or opinion of any particular member of the court upon a challenge or upon the findings or sentence unless required to do so before a court of justice in due course of law. So help you God."

(b) Military judge:

"You, ________, do swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws and regulations provided for trials by court-martial, all the duties incumbent upon you as military judge of this court. So help you God."

(c) Trial counsel and assistant trial counsel:

"You, ________ (and) ________, do swear (or affirm) that you will faithfully perform the duties of trial counsel. So help you God."

(d) Defense counsel and assistant defense counsel:

"You, ________ (and) ________, do swear (or affirm) that you will faithfully perform the duties of defense (and individual) counsel. So help you God."

(e) Court of inquiry:

The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you without partiality, favor, affection, prejudice or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You do swear (or affirm) that you will according to the best of your abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

(f) Witnesses:

All persons who give evidence before a court-martial or court of inquiry shall be examined on oath, administered by the presiding officer, in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

(g) Reporter or interpreter:

"You swear (or affirm) that you will faithfully perform the duties of reporter (or interpreter) to this court. So help you God."

HISTORY: Codes, 1942, § 8529-43; Laws, 1966, ch. 538, § 43; Laws, 1981, ch. 362, § 45, eff from and after July 1, 1981.

Cross References — Appointment of interpreter for the deaf in judicial proceedings and custodial situations, see §§ 13-1-301 et seq.

Authority to administer oaths for purposes of military administration, see § 33-13-603.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 280.

§ 33-13-315. Statute of limitations.

(1) A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny, may be tried and punished at any time without limitation.

(2) Except as otherwise provided in this section, a person charged with offenses punishable under this code is not liable to be tried by court-martial if the offense was committed more than three (3) years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(3) Periods in which the accused was absent from territory in which the state has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

HISTORY: Codes, 1942, § 8529-44; Laws, 1966, ch. 538, § 44; Laws, 1981, ch. 362, § 46, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 257.

§ 33-13-317. Former jeopardy.

(1) No person may, without his consent, be tried a second time in any military court of the State of Mississippi for the same offense.

(2) No proceedings in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(3) A proceeding which, after the proper convening of the court and the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this section.

HISTORY: Codes, 1942, § 8529-45; Laws, 1966, ch. 538, § 45; Laws, 1981, ch. 362, § 47, eff from and after July 1, 1981.

Cross References — Reconsideration and revision of record, see § 33-13-407.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 255, 256.

§ 33-13-319. Pleas of the accused.

(1) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through a lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as if he had pleaded not guilty.

(2) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, or by a summary court officer, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

HISTORY: Codes, 1942, § 8529-46; Laws, 1966, ch. 538, § 46; Laws, 1981, ch. 362, § 48, eff from and after July 1, 1981.

§ 33-13-321. Opportunity to obtain witnesses and other evidence.

(1) The trial counsel, the defense counsel, the accused, if not represented by counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence. Each shall have the right of compulsory process for obtaining witnesses.

(2) The military judge or summary court officer of a court-martial may:

(a) Issue a warrant for the arrest of any accused person who having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(b) Issue a subpoena duces tecum and other subpoenas;

(c) Enforce by attachment the attendance of witnesses and the production of books and papers; and

(d) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

(3) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers or peace officers as prescribed by the laws of the state.

HISTORY: Codes, 1942, § 8529-47; Laws, 1966, ch. 538, § 47; Laws, 1981, ch. 362, § 49, eff from and after July 1, 1981.

Cross References — Subpoenas for witnesses, generally, see § 13-3-93 et seq.

Summoning witnesses to appear and testify before courts of inquiry, see § 33-13-601.

Issuance of subpoenas, enforcement of attendance of witnesses and the like, see § 33-13-615.

Expenses of witnesses, see § 33-13-621.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 276, 278.

§ 33-13-323. Refusal to appear or testify.

(1) Any person not subject to this code who:

(a) Has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer or peace officer designated to take a deposition to be read in evidence before a court; and

(b) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses under Section 33-13-621; and

(c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce, is guilty of an offense against the state and may be punished by a fine not to exceed three hundred dollars ($300.00) or confinement not to exceed thirty (30) days in jail, or by both fine and confinement, and such witness shall be prosecuted in the appropriate county court.

(2) The appropriate district attorney for the state in any circuit court having jurisdiction where the military proceeding was convened shall, upon submission of a complaint to him by the presiding officer of a military court, commission, court of inquiry or board, file an information against and prosecute any person violating this section.

HISTORY: Codes, 1942, § 8529-48; Laws, 1966, ch. 538, § 48; Laws, 1981, ch. 362, § 50, eff from and after July 1, 1981.

Cross References — General penalty for nonappearing subpoenaed witnesses, see § 13-3-103.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 276, 278.

§ 33-13-325. Contempts.

A military court may punish for contempt any person who uses any menacing words, sign or gesture in its presence, or who disturbs its proceedings by any riot or disorder. Punishment may not exceed confinement for thirty (30) days or a fine of Eight Hundred Dollars ($800.00), or both, provided that punishment of civilians by civilian courts for such contempt shall not be prohibited hereby.

HISTORY: Codes, 1942, § 8529-49; Laws, 1966, ch. 538, § 49; Laws, 1981, ch. 362, § 51; Laws, 2017, ch. 354, § 5, eff from and after July 1, 2017.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 276, 278.

§ 33-13-327. Depositions.

(1) At any time after charges have been signed, as provided in Section 33-13-251, any party may take oral or written depositions unless the military judge, a court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such authority may designate attorneys in the state military forces to represent the prosecution and the defense and may authorize those persons to take the deposition of any witness.

(2) The party at whose instance a deposition is to be taken shall give to

every other party reasonable written notice of the time and place for taking the deposition.

(3) Depositions may be taken before and authenticated by any military or civil officer authorized by laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(4) Any duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission, or in any proceeding before a court of inquiry, if it appears:

(a) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of one hundred (100) miles from the place of trial or hearing;

(b) That the witness by reason of death, age or sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(c) That the present whereabouts of the witness is unknown.

HISTORY: Codes, 1942, § 8529-50; Laws, 1966, ch. 538, § 50; Laws, 1981, ch. 362, § 52, eff from and after July 1, 1981.

Cross References — Depositions, generally, see § 13-1-227 et seq.
Who may convene general courts-martial, see § 33-13-175.
Who may convene special courts-martial, see § 33-13-177.
Who may convene summary courts-martial, see § 33-13-179.
Payment of expenses incurred under this section, see § 33-13-625.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 276, 278.

§ 33-13-329. Admissibility of records of courts of inquiry.

(1) Upon a showing of unavailability in any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, or of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consent to the introduction of such evidence.

(2) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(3) Such testimony may also be read in evidence before a court of inquiry or a military board.

(4) In all courts of inquiry both enlisted men and officers shall have the right to counsel and the right to cross-examination of all witnesses.

HISTORY: Codes, 1942, § 8529-51; Laws, 1966, ch. 538, § 51; Laws, 1981, ch. 362, § 53, eff from and after July 1, 1981.

Cross References — Courts of inquiry, generally, see § 33-13-601.
Expenses of administration, see § 33-13-625.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 276, 278.

§ 33-13-331. Voting and rulings.

(1) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall collect and count the votes. The count shall be checked by the president who shall forthwith announce the result of the ballot to the members of the court.

(2) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused is final and constitutes the ruling of the court. However, the military judge may change his ruling at any time during the trial.

(3) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(a) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(b) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(c) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt, and;

(d) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the state.

(4) Subsections (1), (2) and (3) of this section do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall, in addition, on request, find the facts specially. If an opinion or memorandum of decision is required to be filed, it will be sufficient if the findings of fact appear therein.

HISTORY: Codes, 1942, § 8529-52; Laws, 1966, ch. 538, § 52; Laws, 1981, ch. 362, § 54, eff from and after July 1, 1981.

§ 33-13-333. Number of votes required.

(1) No person may be convicted of an offense, except by the concurrence of two-thirds (⅔) of the members present at the time the vote is taken.

(2) All sentences shall be determined by the concurrence of two-thirds (⅔) of the members present at the time the vote is taken.

(3) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged, but a determination to reconsider a sentence with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

HISTORY: Codes, 1942, § 8529-53; Laws, 1966, ch. 538, § 53; Laws, 1981, ch. 362, § 55, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 285.

§ 33-13-335. Court to announce action.

A court-martial shall announce its finding and sentence to the parties as soon as determined.

HISTORY: Codes, 1942, § 8529-54; Laws, 1966, ch. 538, § 54, eff from and after June 1, 1966.

§ 33-13-337. Record of trial.

(1) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions that would impose such a duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations of the Governor.

(2) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by such regulations as the Governor may prescribe.

(3) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

HISTORY: Codes, 1942, § 8529-55; Laws, 1966, ch. 538, § 55; Laws, 1981, ch. 362, § 56, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military and Civil Defense § 286.

ARTICLE 15.

SENTENCES.

Sec.
33-13-351. Cruel and unusual punishment prohibited.
33-13-353. Maximum limits.
33-13-355. Effective date of sentences.
33-13-357. Execution of confinement.

§ 33-13-351. Cruel and unusual punishment prohibited.

Punishment by flogging, or by branding, marking or tatooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

HISTORY: Codes, 1942, § 8529-56; Laws, 1966, ch. 538, § 56, eff from and after June 1, 1966.

Cross References — Definition of terms used in this chapter, see § 33-13-1.
Federal Aspects— Sentences under Uniform Code of Justice, see 10 USCS §§ 855 through 858b.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 290, 293.

§ 33-13-353. Maximum limits.

The punishment which a court-martial may direct for an offense may not exceed the limits prescribed by this code or by federal law.

HISTORY: Codes, 1942, § 8529-57; Laws, 1966, ch. 538, § 57; Laws, 1981, ch. 362, § 57, eff from and after July 1, 1981.

Federal Aspects— Sentences under Uniform Code of Justice, see 10 USCS §§ 855 through 858b.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 287-289, 291.

§ 33-13-355. Effective date of sentences.

(1) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(2) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(3) In the militia or state military forces not in federal service, no sentence of dismissal or dishonorable discharge may be executed until all reviews and any appeals to the Mississippi Court of Military Appeals are complete.

(4) All other sentences of courts-martial are effective on the date ordered executed.

HISTORY: Codes, 1942, § 8529-58; Laws, 1966, ch. 538, § 58; Laws, 1981, ch. 362, § 58, eff from and after July 1, 1981.

Cross References — Prohibition on punishment prior to trial, see § 33-13-27.
Review by Mississippi Court of Military Appeals, see § 33-13-417.

§ 33-13-357. Execution of confinement.

(1) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the state military forces or in any jail, penitentiary, or prison or other institution, under the control of this state or any political subdivision thereof and designated by the Adjutant General. Persons so confined in a jail, penitentiary, prison or other institution are subject to the same discipline and treatment as persons confined or

committed to the jail, penitentiary, prison or other institutions by the courts of the state or of any political subdivision thereof.

(2) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(3) The keepers, officers, and wardens of any jails, penitentiaries, prisons, or other institutions, under the control of this state or any political subdivision thereof, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law.

HISTORY: Codes, 1942, § 8529-59; Laws, 1966, ch. 538, § 59; Laws, 1981, ch. 362, § 59, eff from and after July 1, 1981.

Cross References — Pre-trial arrest or confinement of persons accused of offenses, see §§ 33-13-21 through 33-13-25.

Execution of sentences, see § 33-13-613.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military and Civil Defense § 292.

ARTICLE 17.

REVIEW OF COURTS-MARTIAL.

Sec.

33-13-401. Error of law; lesser included offense.
33-13-403. Initial action on the record.
33-13-405. General court-martial records.
33-13-407. Reconsideration and revision.
33-13-409. Rehearings.
33-13-411. Approval by the convening authority.
33-13-413. Initial review and disposition of records.
33-13-415. Review by state judge advocate.
33-13-417. Review by Mississippi Court of Military Appeals.
33-13-419. Precedents of other courts.
33-13-421. Appellate counsel.
33-13-423. Vacation of suspension.
33-13-425. Petition for a new trial.
33-13-427. Remission or suspension; administrative discharge.
33-13-429. Restoration; administrative discharge.
33-13-431. Finality of proceedings, findings, and sentences.

§ 33-13-401. Error of law; lesser included offense.

(1) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(2) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

HISTORY: Codes, 1942, § 8529-60; Laws, 1966, ch. 538, § 60; Laws, 1981, ch. 362, § 60, eff from and after July 1, 1981.

Editor's Notes — A former § 33-13-401 [Codes, 1942, § 8529-60; Laws, 1966, ch. 538, § 60] generally summarized the authority of the convening authority to execute, commute, or suspend court-martial sentence.

Cross References — Definition of terms used in this chapter, see § 33-13-1.

Federal Aspects— Review of courts-martial under Uniform Code of Military Justice, see 10 USCS §§ 859 through 876b.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military and Civil Defense §§ 296 et seq.

§ 33-13-403. Initial action on the record.

After trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

HISTORY: Codes, 1942, § 8529-61; Laws, 1966, ch. 538, § 61; Laws, 1981, ch. 362, § 61, eff from and after July 1, 1981.

Cross References — Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 296 et seq.

§ 33-13-405. General court-martial records.

The convening authority shall refer the record of each general court-martial to his judge advocate who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

HISTORY: Codes, 1942, § 8529-62; Laws, 1966, ch. 538, § 62, eff from and after June 1, 1966.

Cross References — Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

§ 33-13-407. Reconsideration and revision.

Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

(a) For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;

(b) For consideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge which sufficiently alleges a violation of some section of this code; or

(c) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

HISTORY: Codes, 1942, § 8529-63; Laws, 1966, ch. 538, § 63; Laws, 1981, ch. 362, § 62, eff from and after July 1, 1981.

Cross References — Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

Prohibition on retrial for the same offense, see § 33-13-317.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military and Civil Defense §§ 296 et seq.

§ 33-13-409. Rehearings.

(a) If the convening authority disapproves the finding and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a hearing, he shall dismiss the charges.

(b) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

HISTORY: Codes, 1942, § 8529-64; Laws, 1966, ch. 538, § 64, eff from and after June 1, 1966.

Cross References — Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 303.

§ 33-13-411. Approval by the convening authority.

In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.

HISTORY: Codes, 1942, § 8529-65; Laws, 1966, ch. 538, § 65, eff from and after June 1, 1966.

Cross References — Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

§ 33-13-413. Initial review and disposition of records.

(1) If the convening authority is the Governor, his action on the review of any record of trial is final, subject to review by the Mississippi Court of Military Appeals.

(2) In all other cases not covered by subsection (1) of this section, if the sentence of a special court-martial as approved by the convening authority includes a bad conduct discharge, whether or not suspended, the entire record shall be sent to the appropriate judge advocate of the state military forces concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the judge advocate shall then be sent to the state judge advocate for review.

(3) All other special and summary court-martial records shall be sent to the judge advocate of the appropriate force of the state military forces and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations prescribed by the Governor.

(4) The state judge advocate shall review the record of trial in each case sent to him for review as provided under subsection (2) of this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the state judge advocate is limited to questions of jurisdiction.

(5) The state judge advocate shall take final action in any case reviewable by him.

HISTORY: Codes, 1942, § 8529-66; Laws, 1966, ch. 538, § 66; Laws, 1981, ch. 362, § 63, eff from and after July 1, 1981.

Cross References — Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

Review by Mississippi Court of Military Appeals, see § 33-13-417.

Delegation of authority by the Governor, see § 33-13-611.

§ 33-13-415. Review by state judge advocate.

(1) In a case reviewable by the state judge advocate under this section, the state judge advocate may act only with respect to the findings and sentence as approved by the convening authority. He may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, he may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the state judge advocate set aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(2) In a case reviewable by the state judge advocate under this or the proceeding section, he shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

HISTORY: Codes, 1942, § 8529-67; Laws, 1966, ch. 538, § 67; Laws, 1981, ch. 362, § 64, eff from and after July 1, 1981.

Editor's Notes — A former § 33-13-415 [Codes, 1942, § 8529-67; Laws, 1966, ch. 538, § 67] involved errors of law not materially prejudicial, and gave any reviewing authority to approve or affirm so much of the finding as included a lesser included offense. For provisions similar to former § 33-13-415, see § 33-13-401.

Cross References — Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military and Civil Defense § 299.

§ 33-13-417. Review by Mississippi Court of Military Appeals.

(1)(a) There is hereby established a Mississippi Court of Military Appeals, located for administrative purposes only in the Mississippi Military Department, State of Mississippi. The court shall consist of five (5) judges appointed by the Adjutant General upon the advice and recommendation of the State Judge Advocate for a term of six (6) years. Initial appointments to this court will be: one (1) judge for a term of two (2) years, two (2) judges for a term of four (4) years, and two (2) judges for a term of six (6) years. The term of office of all successor judges shall be for a six-year period of time, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The Adjutant General, upon the advice and recommendation of the State Judge Advocate, shall appoint the chief judge of this court. A person is eligible for appointment to this court who:

(i) Is a member of the bar of the Supreme Court of the State of Mississippi;

(ii) Is a member of a federal bar;

(iii) Is a commissioned officer of the state military forces, active or retired, or a retired commissioned officer in the reserves of the Armed Forces of the United States of America;

(iv) Has been engaged in the active practice of law for at least five (5) years;

(v) Has at least five (5) years' experience as a staff judge advocate, judge advocate, or legal officer with the state military forces. The requirements in (iv) and (v) of this subsection may be satisfied by equivalent experience or practice in the Armed Forces of the United States.

(b) The court may promulgate its own rules of procedure, provided, however, that a majority of the five (5) judges shall constitute a quorum and the concurrence of a majority of the judges acting on a given case shall be necessary to a decision of the court.

(c) Judges of the Mississippi Court of Military Appeals may be removed by the Adjutant General upon notice and hearing for neglect of duty and malfeasance in office, or for mental or physical disability.

(d) If a judge of the Mississippi Court of Military Appeals is temporarily unable to perform his duties the Adjutant General upon the advice and recommendation of the State Judge Advocate may designate a military judge, as defined in this code, to fill the office for the period of disability.

(e) The judges of the Mississippi Court of Military Appeals, while actually sitting in review of a matter placed under their jurisdiction by the code, and while traveling to and from such sessions, shall be paid compensation equal to that compensation as prescribed for the judges of the circuit courts of the State of Mississippi, to include both salary and travel expenses.

(2) The Mississippi Court of Military Appeals shall have appellate jurisdiction, upon petition of an accused, to hear and review the record in:

(a) All general and special court-martial cases; and

(b) All other cases where a judge of this court has made a determination that there may be a constitutional issue involved.

(3) The accused has sixty (60) calendar days from the time of receipt of actual notice of the final action on his case, under this code, to petition the Mississippi Court of Military Appeals for review, said petition to set forth all errors assigned. The court shall act upon such a petition within sixty (60) calendar days of the receipt thereof. In the event the court fails or refuses to grant such petition for review the final action of the convening authority will be deemed to have been approved; notwithstanding any other provision of this code, upon the court granting a hearing of an appeal, the court may grant a stay or defer service of the sentence of confinement or any other punishment under this code until the court's final decision upon the case.

(4) In a case reviewable under subsection (2)(a) of this section the Mississippi Court of Military Appeals may act only with respect to the findings

and sentence as finally approved and ordered executed by the convening authority. In a case reviewable under subsection (2)(b) of this section this court need take action only with respect to matters of law, and the action of this court is final.

(5) If the Mississippi Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed. After the Mississippi Court of Military Appeals has acted on the case, the record shall be returned to the State Judge Advocate who shall notify the convening authority of the court's decision. If further action is required the State Judge Advocate shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

HISTORY: Codes, 1942, § 8529-68; Laws, 1966, ch. 538, § 68; Laws, 1981, ch. 362, § 65; Laws, 1989, ch. 473, § 8, eff from and after July 1, 1989.

Editor's Notes — A former § 33-13-417 [Codes, 1942, § 8529-68; Laws, 1966, ch. 538, § 68] provided for representation of accused on review by military or civilian counsel. For current provisions as to appellate counsel, see § 33-13-421.

Cross References — Compensation of circuit judges, see § 25-3-35.

Travel expenses of the judiciary, see § 25-3-43.

Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

Military judges, see § 33-13-183.

Effect of petition for new trial on appeal pending before the Mississippi Court of Military Appeals, see § 33-13-425.

Payment of expenses incurred under this section, see § 33-13-625.

RESEARCH REFERENCES

ALR.

Power of successor judge taking office during term time to vacate, set aside, or annul judgment entered by his or her predecessor. 51 A.L.R.5th 747.

Review by federal civil courts of court-martial convictions – modern cases, 95 A.L.R. Fed. 472.

Am. Jur.

53A Am. Jur. 2d, Military and Civil Defense §§ 302, 307.

§ 33-13-419. Precedents of other courts.

Decisions of the United States Court of Appeals for the Armed Forces and of the Courts of Review of the Armed Forces of the United States shall be considered persuasive authority but will not be regarded as binding precedent unless adopted as such by the Mississippi Court of Military Appeals.

HISTORY: Codes, 1942, § 8529-69; Laws, 1966, ch. 538, § 69; Laws, 1981, ch. 362, § 66; Laws, 2016, ch. 333, § 1, eff from and after July 1, 2016.

Editor's Notes — A former § 33-13-419 [Codes, 1942, § 8529-69; 1966, ch. 538,

§ 69] provided for vacation of suspension of sentence. For current provisions, see § 33-13-423.

§ 33-13-421. Appellate counsel.

The counsel and defense counsel of a court-martial shall serve in the capacity of appellate counsel upon an appeal authorized under this code. The accused has the additional right to be represented by civilian counsel at his own expense. Should the defense or trial counsel become unable to perform their duties because of illness or other disability, the convening authority will appoint a qualified trial or defense counsel to continue the proceedings.

HISTORY: Codes, 1942, § 8529-70; Laws, 1966, ch. 538, § 70; Laws, 1981, ch. 362, § 67, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-417 [Codes 1942, § 8529-68; Laws, 1966, ch. 538, § 68].

A former § 33-13-421 [Codes, 1942, §§ 8529-70; Laws, 1966, ch. 538, § 70] provided for petition for new trial. For current provisions, see § 33-13-425.

Cross References — Detail and duties of trial counsel and defense counsel generally, see §§ 33-13-185 and 33-13-305.

Effect of petition for new trial on finality of proceedings, see § 33-13-431.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 304.

§ 33-13-423. Vacation of suspension.

(1) Before the vacation of the suspension of a special court-martial sentence which as approved includes a dismissal or bad conduct discharge, or of any general court-martial sentence, a hearing on the alleged violation of probation shall be held. The probationer shall be represented at the hearing by military counsel if he so desires.

(2) The record of the hearing and the recommendation of the hearing officer shall be sent for action to the Governor in cases involving a general court-martial sentence and to the commanding officer of the state military forces of which the probationer is a member in all other cases covered by subsection (1) of this section. If the Governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(3) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

HISTORY: Codes, 1942, § 8529-71; Laws, 1966, ch. 538, § 71; Laws, 1981, ch. 362, § 68, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of

§ 33-13-419 [Codes 1942, § 8529-69; Laws, 1966, ch. 538, § 69].

A former § 33-13-423 [Codes, 1942, § 8529-71; Laws, 1966, ch. 538, § 71] provided for remission or suspension of unexecuted part of sentence; also provided substitution of administrative discharge for sentence provided by court-martial. For current provisions, see § 33-13-427.

Cross References — Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 292-294, 300.

§ 33-13-425. Petition for a new trial.

At any time within two (2) years after approval by the convening authority of a court-martial sentence, the accused may petition the state judge advocate for a new trial on ground of newly discovered evidence or fraud on the court-martial. If the accused's case is pending before the Mississippi Court of Military Appeals when this petition is filed, the appeal will not proceed until the state judge advocate has made a decision on the request. If the petition is granted, the appeal will be dismissed. If the petition is denied, the court of military appeals will continue its proceedings on the case.

HISTORY: Codes, 1942, § 8529-72; Laws, 1966, ch. 538, § 72; Laws, 1981, ch. 362, § 69, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-421 [Codes, 1942, § 8529-70; Laws, 1966, ch. 538, § 70].

A former § 33-13-425 [Codes, 1942, § 8529-72; Laws, 1966, ch. 538, § 72] provided for restoration of rights and privileges where court-martial sentence is set aside or disapproved; also provided for substitution of administrative discharge for sentence provided by court-martial. For current provisions, see § 33-13-429.

Cross References — Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

Petition for new trial as only bar to final and binding effect of reports and actions pursuant to court-martial proceedings, see § 33-13-431.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 304.

§ 33-13-427. Remission or suspension; administrative discharge.

(1) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected fines.

(2) The Governor may, for good cause, substitute an administrative form

of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

HISTORY: Codes, 1942, § 8529-73; Laws, 1966, ch. 538, § 73; Laws, 1981, ch. 362, § 70, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-423 [Codes, 1942, § 8529-71; Laws, 1966, ch. 538, § 71].

A former § 33-13-427 [Codes, 1942, § 8529-73; Laws, 1966, ch. 538, § 73] provided for the finality of proceedings, findings, and sentences of court-martial. For current provisions, see § 33-13-431.

Cross References — Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 292-294, 300.

§ 33-13-429. Restoration; administrative discharge.

(1) Under such regulations as the Governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or hearing.

(2) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issue, and a commissioned officer dismissed by that sentence may be reappointed by the Governor alone to such commissioned grade and with such rank as in the opinion of the Governor that former officer would have attained had he not been dismissed. The reappointment of such former officer may be made if a position vacancy is available under applicable table of organization. All the time between the dismissal and reappointment shall be considered as service for all purposes.

HISTORY: Laws, 1981, ch. 362, § 71, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-425 [Codes, 1942, § 8529-72; Laws, 1966, ch. 538].

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense §§ 3292-294, 300, 303, 304.

§ 33-13-431. Finality of proceedings, findings, and sentences.

The appellate review of records of trial provided by this code, the proceedings, findings and sentences of court-martial as reviewed and approved, as required by this code, and all dismissals and discharges carried into execution under sentences by court-martial following review and approval as required by this code, are final and conclusive. Orders publishing the proceedings of the court-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies and officers of the state, subject only to action upon a petition for a new trial as provided in Section 33-13-425.

HISTORY: Laws, 1981, ch. 362, § 72, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-427 [Codes, 1942, § 8529-73; Laws, 1966, ch. 538, § 73].

ARTICLE 19.

PUNITIVE SECTIONS.

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§ 33-13-451. Persons to be tried or punished.

No person may be tried or punished for any offense provided for in Sections 33-13-451 through 33-13-529, unless it was committed while he was in a duty status or during a period of time when he was under lawful orders to be in a duty status.

HISTORY: Codes, 1942, § 8529-74; Laws, 1966, ch. 538, § 74; Laws, 1981, ch. 362, § 73, eff from and after July 1, 1981.

Cross References — Definition of terms used in this chapter, see § 33-13-1.

Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Punitive articles under the Uniform Code of Military Justice, see 10 USCS §§ 877 through 934.

§ 33-13-453. Principal.

Any person subject to this code who:

(1) commits an offense punishable by this code or aids, abets, counsels, commands or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this code; is a principal.

HISTORY: Codes, 1942, § 8529-75; Laws, 1966, ch. 538, § 75, eff from and after June 1, 1966.

Federal Aspects— Principals, see 10 USCS § 877.

§ 33-13-455. Accessory after the fact.

Any person subject to this code, who knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-76; Laws, 1966, ch. 538, § 76, eff from and after June 1, 1966.

Federal Aspects— Accessory after the fact, see 10 USCS § 878.

§ 33-13-457. Conviction of lesser included offense.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

HISTORY: Codes, 1942, § 8529-77; Laws, 1966, ch. 538, § 77, eff from and after June 1, 1966.

Federal Aspects— Conviction of lesser included offenses and attempts, see 10 USCS § 879.

§ 33-13-459. Attempts.

(a) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

HISTORY: Codes, 1942, § 8529-78; Laws, 1966, ch. 538, § 78, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Attempts, see 10 USCS § 880.

§ 33-13-461. Conspiracy.

Any person subject to this code who conspires with any other person to commit an offense under this code, shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-79; Laws, 1966, ch. 538, § 79, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Conspiracy, see 10 USCS § 881.

§ 33-13-463. Solicitation.

(a) Any person subject to this code who solicits or advises another or others to desert in violation of Section 33-13-469 or mutiny in violation of Section 33-13-487, shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if, the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Section 33-13-497, or sedition in violation of Section 33-13-487 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-80; Laws, 1966, ch. 538, § 80, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Solicitation, see 10 USCS § 882.

§ 33-13-465. Fraudulent enlistment, appointment, or separation.

Any person who:

(1) procures his own enlistment or appointment in the state military forces by knowingly false representations or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-81; Laws, 1966, ch. 538, § 81, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in paragraph (1) of this section, see § 33-13-5.

Federal Aspects— Fraudulent enlistment, appointment or separation, see 10 USCS § 904a.

§ 33-13-467. Unlawful enlistment, appointment, or separation.

Any person subject to this code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-82; Laws, 1966, ch. 538, § 82, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Unlawful enlistment, appointment or separation, see 10 USCS § 904b.

§ 33-13-469. Desertion.

(1) Any member of the state military forces who:

(a) Without authority goes or remains absent from his unit, organization or place of duty with intent to remain away therefrom permanently; or

(b) Quits his unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(c) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the Armed Forces of the United States or in any foreign armed service without fully disclosing the fact that he has not been regularly separated; is guilty of desertion.

(2) Any commissioned officer of the state military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(3) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-83; Laws, 1966, ch. 538, § 83; Laws, 1981, ch. 362, § 74, eff from and after July 1, 1981.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Penalty for soliciting another to desert, see § 33-13-463.

Federal Aspects— Desertion, see 10 USCS § 885.

§ 33-13-471. Absent without leave.

Any person subject to this code, who without authority:

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-84; Laws, 1966, ch. 538, § 84, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Absence without leave, see 10 USCS § 886.

§ 33-13-473. Missing movement.

Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-85; Laws, 1966, ch. 538, § 85, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Missing movement, see 10 USCS § 887.

§ 33-13-475. Contempt towards Governor.

Any commissioned officer subject to this code who uses contemptuous words against the Governor of Mississippi shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-86; Laws, 1966, ch. 538, § 86; Laws, 1981, ch. 362, § 75, eff from and after July 1, 1981.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Contempt toward officials, see 10 USCS § 888.

§ 33-13-477. Disrespect toward superior commissioned officer.

Any person subject to this code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-87; Laws, 1966, ch. 538, § 87, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Disrespect toward superior commissioned officer, see 10 USCS § 889.

§ 33-13-479. Assaulting or willfully disobeying superior commissioned officer.

Any person subject to this code who:

(a) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while that officer is in the execution of his office; or

(b) Willfully disobeys a lawful command of his commissioned officer; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-88; Laws, 1966, ch. 538, § 88; Laws, 1981, ch. 362, § 76, eff from and after July 1, 1981.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Assaulting or willfully disobeying superior commissioned officer, see 10 USCS § 890.

§ 33-13-481. Insubordinate conduct toward warrant officer or noncommissioned officer.

Any person subject to this code who:

(a) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his office; or

(b) Willfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(c) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his office; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-89; Laws, 1966, ch. 538, § 89; Laws, 1981, ch. 362, § 77, eff from and after July 1, 1981.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer, see 10 USCS § 891.

§ 33-13-483. Failure to obey order or regulation.

Any person subject to this code who:

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the state military forces which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-90; Laws, 1966, ch. 538, § 90, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Failure to obey order or regulation, see 10 USCS § 892.

§ 33-13-485. Cruelty and maltreatment.

Any person subject to this code, who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-91; Laws, 1966, ch. 538, § 91, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Cruelty and maltreatment, see 10 USCS § 893.

§ 33-13-487. Mutiny or sedition.

(a) Any person subject to this code who:

(1) with intent to usurp or override lawful military authority refuses, in concert with any other person, or persons, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbances against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place; is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-92; Laws, 1966, ch. 538, § 92, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Penalty for soliciting another to commit sedition, see § 33-13-463.
Federal Aspects— Mutiny or sedition, see 10 USCS § 894.

§ 33-13-489. Resistance, breach of arrest, and escape.

Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-93; Laws, 1966, ch. 538, § 93, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Resistance, flight, breach of arrest, and escape, see 10 USCS § 887a.

§ 33-13-491. Releasing prisoner without proper authority.

Any person subject to this code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with the law.

HISTORY: Codes, 1942, § 8529-94; Laws, 1966, ch. 538, § 94, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Releasing prisoner without proper authority, see 10 USCS § 896.

§ 33-13-493. Unlawful detention of another.

Any person subject to this code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-95; Laws, 1966, ch. 538, § 95, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Unlawful attention, see 10 USCS § 897.

§ 33-13-495. Noncompliance with procedural rules.

Any person subject to this code who:

(a) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

(b) Knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before or after trial of an accused; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-96; Laws, 1966, ch. 538, § 96; Laws, 1981, ch. 362, § 78, eff from and after July 1, 1981.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

§ 33-13-497. Misbehavior before the enemy.

Any person subject to this code who before or in the presence of the enemy:

(a) Runs away;

(b) Shamefully abandons, surrenders or delivers up any command, unit, place or military property which it is his duty to defend;

(c) Through disobedience, neglect or intentional misconduct endangers the safety of any such command, unit, place or military property;

(d) Casts away his arms or ammunition;

(e) Is guilty of cowardly conduct;

(f) Causes false alarms in the command, unit or place under control of the Armed Forces of the United States or the state military forces of Mississippi, or any other state;

(g) Quits his place of duty to plunder or pillage;

(h) Willfully fails to do his utmost to encounter, engage, capture or destroy enemy troops, combatants, vessels, aircraft or any other thing, which it is his duty to so encounter, engage, capture or destroy; or

(i) Does not afford all practicable relief and assistance to any troops, combatants, vessels or aircraft of the Armed Forces belonging to the United States or their allies, to this state, or to any other state, when engaged in battle; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-97; Laws, 1966, ch. 538, § 97; Laws, 1981, ch. 362, § 79, eff from and after July 1, 1981.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Penalty for soliciting another to commit act of misbehavior before enemy, see § 33-13-463.

Federal Aspects— Misbehavior before the enemy, see 10 USCS § 899.

§ 33-13-499. Subordinate compelling surrender.

Any person subject to this code who compels or attempts to compel the commander of any place, vessel, aircraft or other military property, or of any body of members of the state military forces of this state, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-98; Laws, 1966, ch. 538, § 98; Laws, 1981, ch. 362, § 80, eff from and after July 1, 1981.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Subordinate compelling surrender, see 10 USCS § 900.

§ 33-13-501. Improper use of countersign.

Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-99; Laws, 1966, ch. 538, § 99, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Improper use of countersign, see 10 USCS § 901.

§ 33-13-503. Forcing a safeguard.

Any person subject to this code who forces a safeguard shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-100; Laws, 1966, ch. 538, § 100, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Forcing a safeguard, see 10 USCS § 902.

§ 33-13-505. Captured or abandoned property.

(1) All persons subject to this code shall secure all public property taken from the enemy for the service of the State of Mississippi or the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.

(2) Any person subject to this code who:

(a) Fails to carry out the duties prescribed in subsection (1);

(b) Buys, sells, trades or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit or advantage to himself or another directly or indirectly connected with himself; or

(c) Engages in looting or pillaging; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-101; Laws, 1966, ch. 538, § 101; Laws, 1981, ch. 362, § 81, eff from and after July 1, 1981.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Captured of abandoned property, see 10 USCS § 908a.

§ 33-13-507. Aiding the enemy.

Any person subject to this code who:

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-102; Laws, 1966, ch. 538, § 102, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Aiding the enemy, see 10 USCS § 903b.

§ 33-13-509. Misconduct of a prisoner.

Any person subject to this code who, while in the hands of the enemy in time of war:

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-103; Laws, 1966, ch. 538, § 103, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Misconduct as prisoner, see 10 USCS § 898.

§ 33-13-511. False official statements.

Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-104; Laws, 1966, ch. 538, § 104, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— False official statements, see 10 USCS § 907.

§ 33-13-513. Military property loss, damage, destruction, wrongful disposition.

Any person subject to this code who, without proper authority:

(1) sells or otherwise disposes of;

(2) wilfully or through neglect damages, destroys, or loses; or

(3) wilfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of, any military property of the United States or of the State of Mississippi; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-105; Laws, 1966, ch. 538, § 105, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— Military property of United States – loss, damage destruction, or wrongful disposition, see 10 USCS § 908.

§ 33-13-515. Property other than military property; waste, spoilage, or destruction.

Any person subject to this code who willfully or recklessly wastes, spoils or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of this state shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-106; Laws, 1966, ch. 538, § 106; Laws, 1981, ch. 362, § 82, eff from and after July 1, 1981.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Property other than military property of United States – Waste, spoilage, or destruction, see 10 USCS § 909.

§ 33-13-517. Improper hazarding of vessel.

(a) Any person subject to this code who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the Armed Forces of the United States or of the state military forces shall be punished as a court-martial may direct.

(b) Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the Armed Forces of the United States or of the state military forces shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-107; Laws, 1966, ch. 538, § 107, eff from and after June 1, 1966.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Improper hazarding of vessel, see 10 USCS § 910.

§ 33-13-519. Under influence of liquor or drugs while on duty; sleeping on post; leaving post before relief.

Any person subject to this code who is found under the influence of intoxicating liquor or any controlled substance listed in the Uniform Controlled Substances Law while on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-108; Laws, 1966, ch. 538, § 108; Laws, 1981, ch. 362, § 83; Laws, 1989, ch. 473, § 9, eff from and after July 1, 1989.

Editor's Notes — This section is derived in part from the former version of § 33-13-521 [Codes, 1942, § 8529-109; Laws, 1966, ch. 538, § 109].
A former § 33-13-519 [Codes, 1942, § 8529-108; Laws, 1966, ch. 538, § 108] involved driving under influence of liquor or drugs, or driving in reckless or wanton manner.
Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Prohibition against use, possession, distribution, etc. of controlled substances, see § 33-13-520.
Uniform Controlled Substances Law, see §§ 41-29-101 et seq.
Federal Aspects— Drunk on duty, see 10 USCS § 912.

§ 33-13-520. Use, possession, distribution, etc. of controlled substance; controlled substance defined.

(1) Any person subject to this code who uses, while on duty, any controlled

substance listed in the Uniform Controlled Substances Law, not legally prescribed, or is found, by a chemical analysis of such person's blood or urine, to have in his blood, while on duty, any controlled substance described in subsection (3), not legally prescribed, shall be punished as a court-martial may direct.

(2) Any person subject to this code who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle or aircraft used by or under the control of the state military forces a substance described in subsection (3) shall be punished as a court-martial may direct.

(3) The substances referred to in subsections (1) and (2) are the following:

(a) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(b) Any substance not specified in paragraph (a) that is listed on a schedule of controlled substance prescribed by the President for the purposes of the federal Uniform Code of Military Justice.

(c) Any other substance not specified in paragraph (a) or contained on a list prescribed by the President under paragraph (b) that is listed in Schedules I through V of Section 202 of the federal Controlled Substances Act (21 USCS § 812).

HISTORY: Laws, 1989, ch. 473, § 10, eff from and after July 1, 1989.

Cross References — Punishment for being under the influence of alcohol or drugs, see § 33-13-519.

Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Federal Aspects — Uniform Code of Military Justice, see 10 USCS §§ 801 et seq. Wrongful use, possession, etc., of controlled substances, see 10 USCS § 912a. Section 202 of the federal Controlled Substances Act, see 21 USCS § 812.

§ 33-13-521. Malingering.

Any person subject to this code who for the purpose of avoiding work, duty or service in the state military forces:

(a) Feigns illness, physical disablement, mental lapse or derangement; or

(b) Intentionally inflicts self-injury; shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-109; Laws, 1966, ch. 538, § 109; Laws, 1981, ch. 362, § 84, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-525 [Codes, 1942, § 8529-111; Laws, 1966, ch. 538, § 111].

A former § 33-13-521 [Codes, 1942, § 8529-109; Laws, 1966, ch. 538, § 109] involved under influence of liquor or drugs while on duty, sleeping on post, and leaving post before relief. For current provisions, see § 33-13-519.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Malingering, see 10 USCS § 883.

§ 33-13-523. Riot or breach of peace.

Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-110; Laws, 1966, ch. 538, § 110; Laws, 1981, ch. 362, § 85, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-527 [Codes, 1942, § 8529-112; Laws, 1966, ch. 538, § 112].
A former § 33-13-523 [Codes, 1942, § 8529-110; Laws, 1966, ch. 538, § 110] involved dueling.
Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Riot or breach of peace, 10 USCS § 916.

§ 33-13-525. Provoking speeches or gestures.

Any person subject to this code who uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-111; Laws, 1966, ch. 538, § 111; Laws, 1981, ch. 362, § 86, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-529 [Codes, 1942, § 8529-113; Laws, 1966, ch. 538, § 113].
A former § 33-13-525 [Codes, 1942, § 8529-111; Laws, 1966, ch. 538, § 111] involved malingering. For current provisions, see § 33-13-521.
Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Provoking speeches or gestures, see 10 USCS § 917.

§ 33-13-527. Conduct unbecoming an officer and a gentleman.

Any commissioned officer, officer candidate or warrant officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

HISTORY: Codes, 1942, § 8529-112; Laws, 1966, ch. 538, § 112; Laws, 1981, ch. 362, § 87, eff from and after July 1, 1981.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.
Federal Aspects— Conduct unbecoming an officer and a gentleman, see 10 USCS § 933.

§ 33-13-529. General article.

Though not specifically mentioned in this code, all disorders and neglect to the prejudice of good order and discipline in the state military forces and/or all conduct of a nature to bring discredit upon the state military forces, of which persons subject to this code may be guilty, shall be taken cognizance of by a general or special court-martial according to the nature and degree of the offense and shall be punished at the discretion of the court.

HISTORY: Codes, 1942, § 8529-113; Laws, 1966, ch. 538, § 113; Laws, 1981, ch. 362, § 88, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from former § 33-13-539 [Codes, 1942, § 8529-118; Laws, 1966, ch. 538, § 118] repealed by Laws, 1981, ch. 362, § 102.

A former § 33-13-529 [Codes, 1842, § 8529-113; Laws, 1966, ch. 538, § 113] involved provoking speeches or gestures. For current provisions, see § 33-13-525.

Cross References — Exclusivity of chapter jurisdiction over offenses in this section, see § 33-13-5.

Federal Aspects— General article, see 10 USCS § 934.

§§ 33-13-531 through 33-13-539. Repealed.

Repealed by Laws, 1981, ch. 362, § 102, eff from and after July 1, 1981.
§ 33-13-531. [Codes, 1942, § 8529-114; Laws, 1966, ch. 538, § 114]
§ 33-13-533. [Codes, 1942, § 8529-115; Laws, 1966, ch. 538, § 115]
§ 33-13-535. [Codes, 1942, § 8529-116; Laws, 1966, ch. 538, § 116]
§ 33-13-537. [Codes, 1942, § 8529-117; Laws, 1966, ch. 538, § 117]
§ 33-13-539. [Codes, 1942, § 8529-118; Laws, 1966, ch. 538, § 118]

Editor's Notes — Former § 33-13-531 involved perjury.

Former § 33-13-533 involved frauds against the government.

Former § 33-13-535 involved larceny and wrongful appropriation.

Former § 33-13-537 involved conduct unbecoming an officer and a gentleman. For current provisions, see § 33-13-527.

Former § 33-13-539 involved the general article as to all disorders and neglect to the prejudice of good order and discipline in state military forces and/or conduct of a nature to bring discredit upon state military forces. For current provisions, see § 33-13-529.

ARTICLE 21.

MISCELLANEOUS PROVISIONS.

Sec.
33-13-601. Courts of inquiry.
33-13-603. Authority to administer oaths.
33-13-605. Complaints of wrongs.
33-13-607. Redress of injuries to property.
33-13-609. Immunity for action of military courts.
33-13-611. Delegation of authority by the Governor.
33-13-613. Execution of process and sentence.
33-13-615. Process of military courts.
33-13-617. Payment of fines, costs, and disposition thereof.
33-13-619. Presumption of jurisdiction.
33-13-621. Witness expenses.
33-13-623. Arrest, bonds, laws applicable.

Sec.
33-13-625. Expenses of administration.
33-13-627. Short title.
33-13-629 and 33-13-631. Repealed.

§ 33-13-601. Courts of inquiry.

(1) Courts of inquiry to investigate any matter may be convened by the Governor or by any other person designated by the Governor for that purpose, or any person authorized to convene a general court-martial by this code, whether or not the persons involved have requested such an inquiry.

(2) A court of inquiry consists of three (3) or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(3) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed in the division of military affairs who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses and to introduce evidence.

(4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(5) The members, counsel, the reporter and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(6) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(7) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(8) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

HISTORY: Codes, 1942, § 8529-119; Laws, 1966, ch. 538, § 119; Laws, 1981, ch. 362, § 89, eff from and after July 1, 1981.

Cross References — Appointment of interpreter for the deaf in judicial proceedings and custodial situations, see §§ 13-1-301 et seq.

Definition of terms used in this chapter, see § 33-13-1.

Who may convene general courts-martial, see § 33-13-175.

Compelling attendance of witnesses by courts-martial, see § 33-13-321.

Admissibility of records of courts of inquiry in other proceedings, see § 33-13-329.

Federal Aspects — Courts of inquiry, see 10 USCS § 935.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 216.

§ 33-13-603. Authority to administer oaths.

(1) The following members of the state military forces may administer oaths for the purpose of legal assistance and military administration, including military justice, and they have the general powers of a notary public in the performance of all notarial acts to be executed by members of the state military forces, their spouses and dependents wherever they may be:

(a) The State Judge Advocate and all judge advocates;

(b) All adjutants, assistant adjutants, acting adjutants and personnel adjutants;

(c) All military judges;

(d) All summary courts-martial;

(e) All administrative officers, assistant administrative officers and acting administrative officers;

(f) All staff judge advocates and legal officers and acting or assistant staff judge advocates and legal officers; and

(g) All other persons designated by regulations of the state military forces or by statute.

(2) The following persons on state active duty may administer oaths necessary in the performance of their duties:

(a) The president, military judge, trial counsel and assistant trial counsel for all general and special courts-martial;

(b) The president, counsel for the court and recorder of any court of inquiry;

(c) All officers designated to take a deposition;

(d) All persons detailed to conduct an investigation;

(e) All recruiting officers; and

(f) All other persons designated by regulations of the state military forces or by statute.

(3) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

(4) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.

HISTORY: Codes, 1942, § 8529-120; Laws, 1966, ch. 538, § 120; Laws, 1981, ch. 362, § 90; Laws, 1989, ch. 473, § 11, eff from and after July 1, 1989.

Cross References — Oaths for military judges, members of courts-martial and the like, see § 33-13-313.

Federal Aspects — Authority to administer oaths, see 10 USCS § 936.

§ 33-13-605. Complaints of wrongs.

(1) Any member of the state military forces who believes himself wronged

by his commanding officer and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send the Adjutant General a true statement of that complaint with the proceedings had thereon.

(2) When an action or proceeding of any nature shall be commenced in any court, other than a military court, by any person against any member of the state military forces for any act done, or cause, ordered or directed to be done in the line of duty, as determined by a finding of fact made by a court of inquiry under Section 33-13-601, while such member was on active state duty, all expenses of representation in such action or proceeding, including fees of witnesses, depositions, court costs and all costs for transcripts of records or other documents that might be needed during trial or appeal shall be paid as provided in this code. When any action or proceeding of any type is brought, as described in this subsection, the Adjutant General, upon the written request of the member involved, shall designate the state judge advocate, a judge advocate or a legal officer of the state military forces to represent such member. Judge advocates or legal officers performing duty under this subsection will be called to state active duty by order of the Governor. If the military legal services, noted above, are not available, then the Adjutant General, after consultation with the state judge advocate and member involved, shall contract with a competent private attorney to conduct such representation.

HISTORY: Codes, 1942, § 8529-121; Laws, 1966, ch. 538, § 121; Laws, 1981, ch. 362, § 91, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-607 [Codes, 1942, § 8529-122; Laws, 1966, ch. 538, § 122].

A former § 33-13-605 required that certain sections of the Code of Military Justice be explained to military personnel upon enlistment or induction, and annually to military units; also required that the Code of Military Justice be made available to military personnel for examination.

Cross References — Payment of expenses incurred under this section, see § 33-13-625.

Federal Aspects — Complaints of wrongs, see 10 USCS § 938.

§ 33-13-607. Redress of injuries to property.

(1) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the state military forces, he may, subject to such regulations as the Governor may prescribe, convene a board to investigate the complaint. The board shall consist of from one (1) to three (3) commissioned officers, and for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and the amount approved by him shall be charged against the pay of the offenders. The order

of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (3), on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(2) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military funds of the units of the state military forces to which the offenders belonged.

(3) Any person subject to this code who is accused of causing willful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. The counsel mentioned herein will be military counsel, provided by the commanding officer instituting this injury. The accused may also employ civilian counsel of his own choosing at his own expense. He has the right of appeal to the next higher commander.

HISTORY: Codes, 1942, § 8529-122; Laws, 1966, ch. 538, § 122; Laws, 1981, ch. 362, § 92, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-609 [Codes, 1942, § 8529-123; Laws, 1966, ch. 538, § 123].

A former § 33-13-607 [Codes, 1942, § 8529-122; Laws, 1966, ch. 538, 3122] involved complaints of wrongs. For current provisions, see § 33-13-605.

Federal Aspects — Redress of injuries to property, see 10 USCS § 939.

§ 33-13-609. Immunity for action of military courts.

No accused may bring an action or proceeding seeking damages against the convening authority, a member of a military court or board convened under this code, any military counsel taking part in such court or board action or appeal, or, any person acting under this code's authority or reviewing its proceedings because of the approval, imposition or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court or board convened under this code.

HISTORY: Codes, 1942, § 8529-123; Laws, 1966, ch. 538, § 123; Laws, 1981, ch. 362, § 93, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-617 [Codes, 1942, § 8529-127; Laws, 1966, ch. 538, § 127].

A former § 33-13-609 [Codes, 1942, § 8529-123; Laws, ch. 538, § 123] involved redress of injury to property. For current provisions, see § 33-13-607.

§ 33-13-611. Delegation of authority by the Governor.

The Governor may delegate any authority vested in him under this code, and may provide for the subdelegation of any such authority.

HISTORY: Codes, 1942, § 8529-124; Laws, 1966, ch. 538, § 124; Laws, 1981, ch. 362, § 94, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of

§ 33-13-621 [Codes, 1942, § 8529-129; Laws, 1966, ch. 538, § 129].

A former § 33-13-611 [Codes, 1942, § 8529-124; Laws, 1966, ch. 538, § 124] involved execution of process and sentence. For current provisions, see § 33-13-613.

Cross References — For provisions vesting authority in the Governor, see §§ 33-13-175, 33-13-301 and 33-13-413.

§ 33-13-613. Execution of process and sentence.

(1) In the state military forces not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state.

(2) When the sentence of a court-martial, as approved and ordered executed, adjudges confinement, and the convening authority has approved the same in whole or in part, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court-martial was held, where the offense was committed, or of the county in which a confinement facility as designated by the Adjutant General is located, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county for the period named in such sentence, as approved, or until he may be directed to release him by proper authority.

HISTORY: Codes, 1942, § 8529-125; Laws, 1966, ch. 538, § 125; Laws, 1981, ch. 362, § 95; Laws, 2016, ch. 404, § 4, eff from and after July 1, 2016.

Editor's Notes — This section is derived in part from the former version of § 33-13-611 [Codes, 1942, § 8529-124; Laws, 1966, ch. 538, § 124].

A former § 33-13-613 [Codes, 1942, § 8529-125; Laws, 1966, ch. 538, § 125] involved process of military courts. For current provisions, see § 33-13-615.

Cross References — Execution of confinement, see § 33-13-357.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 292.

§ 33-13-615. Process of military courts.

(1) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

(2) Process and mandates may be issued by summary courts-martial, provost courts, military judges, or the president of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this code.

(3) All officers to whom process or mandates may be directed shall execute

them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

(4) The president of any court-martial, any military judge and any summary court officer, shall have authority to issue, under his hand, in the name of the State of Mississippi, directed to any sheriff or constable, whose duty it shall be to serve or execute the same in the same manner in which like process is served or executed when issued by a magistrate, all necessary process, subpoenas, attachments, warrants of arrest, and warrants of commitment.

HISTORY: Codes, 1942, § 8529-126; Laws, 1966, ch. 538, § 126; Laws, 1981, ch. 362, § 96, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-613 [Codes, 1942, § 8529-125; Laws, 1966, ch. 538, § 125].

A former § 33-13-615 [Codes, 1942, § 8529-126, Laws, 1966, ch. 538, § 126] provided payment and disposition of fines and costs. For current provisions, see § 33-13-617.

Cross References — Obtaining witnesses and other evidence generally, see § 33-13-321.

§ 33-13-617. Payment of fines, costs, and disposition thereof.

(1) All fines and costs imposed by general court-martial shall be paid to the officer ordering such court, and/or to the officer commanding for the time being, and by said officer, within five (5) days from the receipt thereof, paid to the Adjutant General, who shall disburse the same as he may see fit for military purposes.

(2) All fines and costs imposed by special or summary court-martial shall be paid to the officer ordering the court, or the officer commanding for the time being, and by such officer, within five (5) days from the receipt thereof, paid to the Adjutant General to be placed to the credit of the military unit fund of the unit of which the person fined was a member when the fine was imposed.

(3) When the sentence of a court-martial adjudges a fine and cost against any person, and such fine and cost has not been fully paid within ten (10) days after the confirmation thereof, the convening authority shall issue a warrant of commitment directed to the sheriff of the county in which the court-martial was held or where the offense was committed, directing him to take the body of the person so convicted and confine him in the county jail for one (1) day for any fine not exceeding One Dollar ($1.00) and one (1) additional day for every dollar above that sum.

HISTORY: Codes, 1942, § 8529-127; Laws, 1966, ch. 538, § 127; Laws, 1981, ch. 362, § 97, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-615 [Codes, 1942, § 8529-126; Laws, 1966, ch. 538, § 126].

A former § 33-13-617 [Codes, 1942, § 8529-127; Laws, 1966, ch. 538, § 127] involved immunity for action of military courts. For current provisions, see § 33-13-609.

§ 33-13-619. Presumption of jurisdiction.

The jurisdiction of the military courts and boards established by this code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding.

HISTORY: Codes, 1942, § 8529-128; Laws, 1966, ch. 538, § 128, eff from and after June 1, 1966.

§ 33-13-621. Witness expenses.

Persons subpoenaed or required to appear as witnesses before military courts shall be entitled to compensation and reimbursement for travel expenses to the same extent permitted such witnesses appearing in criminal proceedings before the circuit courts of this state.

HISTORY: Codes, 1942, § 8529-129; Laws, 1966, ch. 538, § 129; Laws, 1981, ch. 362, § 98, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-623 [Codes, 1942, § 8529-130; Laws, 1966, ch. 538, § 130].

A former § 33-13-621 [Codes, 1942, § 8529-129; Laws, 1966, ch. 538, § 129] related to delegation of authority by Governor. For current provisions, see 33-13-611.

Cross References — Fees of witnesses in criminal cases, see § 25-7-57.

Summoning witnesses before courts-martial generally, see § 33-13-321.

Penalty for refusing to appear and testify after having been subpoenaed and paid or tendered fees and expenses under this section, see § 33-13-323.

Payment of expenses incurred under this section, see § 33-13-625.

§ 33-13-623. Arrest, bonds, laws applicable.

(1) When charges against any person in the military service of this state are made or referred to a convening authority authorized to convene a court-martial for the trial of such person, and a convening authority, believing that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, a convening authority may issue a warrant of arrest to the sheriff or any constable of the county in which the person charged resides, or wherein he is supposed to be, commanding the sheriff or constable to take the body of the person so charged and confine him in jail until such time as his case may be finally disposed of; and the sheriff or constable, on the order of the convening authority, shall bring the person so charged before the court-martial for trial, or turn him over to whomever the order may direct, the convening authority issuing the warrant of arrest, shall endorse thereon the amount of bail to be required; and it shall be a violation of duty on the part of any sheriff or constable to permit a person so committed to remain out of jail, except that he may, when such person desires it, permit him to give bail in the sum endorsed on the warrant,

conditioned for his appearance, from time to time, before such court-martial as he may be ordered for trial, and until his case is finally disposed of, or until such time as he may surrender to the sheriff or constable as directed by the convening authority of the court-martial before which he may be ordered for trial.

(2) Upon the failure of any person, who has been admitted to bail conditioned for his appearance for trial before a court-martial, or upon failure of any person admitted to bail to appear as a witness in any case before a court-martial, as conditioned in the bail bond of any such person, the court-martial shall certify the fact of such failure to so appear to the convening authority or to the officer commanding for the time being, as the case may be; and such officer shall cause a judge advocate, district or county attorney to file suit therefor.

(3) The rules laid down in the criminal procedural statutes of this state relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this law are applicable to bail taken as provided in this code.

(4) A warrant of arrest issued by a convening authority to order a court-martial, and all subpoenas and other process issued by courts-martial and courts of inquiry shall extend to every part of the state.

(5) When any lawful process, issued by the proper officer of any court-martial, comes to the hands of any sheriff or constable, he shall perform the usual duties of such officer and perform all acts and duties by this code imposed or authorized to be performed by any sheriff or constable. Failure of any sheriff or constable to perform the duties required by this code shall be misdemeanor offenses punishable by a fine of not more than One Thousand Dollars ($1,000.00) and by confinement of not less than six (6) months and not more than twelve (12) months in jail.

HISTORY: Codes, 1942, § 8529-130; Laws, 1966, ch. 538, § 130; Laws, 1981, ch. 362, § 99, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-625 [Codes, 1942, § 8526-131; Laws, 1966, ch. 538, § 131].

A former § 33-13-623 [Codes, 1942, § 8529-130; Laws, 1966, ch. 538, § 130] involved witness expenses. For current provisions, see § 33-13-621.

Cross References — General duties of constables, see § 19-19-5.

Provisions governing the sheriff generally, see §§ 19-25-1 et seq.

Who may convene courts-martial, see §§ 33-13-175 through 33-13-179.

Provisions governing bail generally, see §§ 99-5-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 33-13-625. Expenses of administration.

The Adjutant General shall have authority to pay all expenses incurred in the administration of state military justice, including the expenses of courts-martial and expenses incurred under Sections 33-13-327, 33-13-417, 33-13-605 and 33-13-621, from any funds appropriated to the Mississippi Military Department.

HISTORY: Codes, 1942, § 8529-131; Laws, 1966, ch. 538, § 131; Laws, 1981, ch. 362, § 100, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from the former version of § 33-13-627 [Codes, 1942, § 8529-132; Laws, 1966, ch. 538, § 132].

A former § 33-13-625 [Codes, 1942, § 8529-131; Laws, 1966, ch. 538, § 131] involved arrest, bonds, laws applicable. For current provisions, see § 33-13-623.

Cross References — Fees of sheriffs and constables, see §§ 25-7-21, 25-7-27.

Bail to release defendant from custody, see §§ 99-5-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 292-294, 300.

§ 33-13-627. Short title.

This chapter may be cited as the "Mississippi Code of Military Justice."

HISTORY: Codes, 1942, § 8529-132; Laws, 1966, ch. 538, § 132; Laws, 1981, ch. 362, § 101, eff from and after July 1, 1981.

Editor's Notes — This section is derived in part from former § 33-13-631 [Codes, 1942, § 8529-134; Laws, 1966, ch. 538, § 134].

A former § 33-13-627 [Codes, 1942, § 8529-132; Laws, ch. 538, § 132] involved expenses of administration. For current provisions, see § 33-13-625.

§§ 33-13-629 and 33-13-631. Repealed.

Repealed by Laws 1981, ch. 362, § 102, eff from and after July 1, 1981.
§ 33-13-629. [Codes, 1942, § 8529-133; Laws, 1966, ch. 538, § 133]
§ 33-13-631. [Codes, 1942, § 8529-134; laws, 1966, ch. 538, § 134]

Editor's Notes — Former § 33-13-629 required uniformity of interpretation with laws of other states and the United States. As to persuasive authority of decisions of federal military appeal and boards of reviews, see § 33-13-419.

Former § 33-13-631 stated the short title of the chapter. For current provisions, see § 33-13-627.

CHAPTER 15.

EMERGENCY MANAGEMENT AND CIVIL DEFENSE

Article 1. Emergency Management Law. 33-15-1
Article 2. Individual Assistance and Emergency Temporary Housing Act. 33-15-201
Article 3. Interstate Civil Defense and Disaster Compact. [Repealed]. 33-15-101
Article 5. Disaster Assistance Act of 1993. 33-15-301
Article 7. Office of Disaster Assistance Coordination. 33-15-401
Article 9. Mississippi County and Municipality Emergency Relief Program. 33-15-501

ARTICLE 1.

EMERGENCY MANAGEMENT LAW.

Sec.
33-15-1. Short title.
33-15-2. Legislative findings and declaration of intent.
33-15-3. Policy and purpose.
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33-15-7. Mississippi Emergency Management Agency established; director and other personnel.
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33-15-21. Immunity.
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33-15-27. Authority to accept services, gifts, grants and loans.
33-15-29. Utilization of existing services and facilities.
33-15-31. Orders, rules and regulations.
33-15-33. Political activity prohibited.
33-15-35. Repealed.
33-15-37. Enforcement.
33-15-39. Peace officers.
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33-15-43. Penalties.
33-15-45. Local emergency management councils continued.
33-15-47. Liberality of construction.
33-15-49. Emergency use of state or local personnel and equipment authorized; limitation of liability.
33-15-51. Grand Gulf Disaster Assistance Trust Fund.
33-15-53. State emergency coordination officers.

§ 33-15-1. Short title.

This article may be cited as the "Mississippi Emergency Management Law."

HISTORY: Codes, 1942, § 8610-01; Laws, 1942, ch. 206; Laws, 1952, ch. 312, § 1; Laws, 1980, ch. 491, § 1, eff from and after passage (approved May 9, 1980).

Cross References — Civil emergencies, see § 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

JUDICIAL DECISIONS

1. In general.

This chapter is not to be read in pari materia with § 31-7-13(k); during an emergency, the Emergency Management Law controls. Bolivar County v. Wal-Mart Stores, Inc., 797 So. 2d 790, 1999 Miss. LEXIS 333 (Miss. 1999).

OPINIONS OF THE ATTORNEY GENERAL

Based on Section 47-1-9, as a general rule, county inmates may not be worked on private property, even if such work benefits the public. However, the Mississippi Emergency Management Law, codified at 33-15-1, et. seq., is an exception to the general rule if the governing authorities determine that an emergency exists and there is a need to use the services of prisoners to protect life or property. Price, December 13, 1996, A.G. Op. #96-0793.

If a board of supervisors finds and determines, consistent with fact, that a local emergency, as defined by Section 33-15-5(g) exists, then the board has the authority to declare a state of emergency and invoke the provisions of Section 33-15-1, et. seq. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

§ 33-15-2. Legislative findings and declaration of intent.

(1) The Legislature finds and declares that the state is vulnerable to a wide range of emergencies, including natural, technological and man-made disasters, all of which threaten the life, health and safety of its people; damage and destroy property; disrupt services and everyday business and recreational activities; and impede economic growth and development. The Legislature further finds that this vulnerability is exacerbated by the growth in the state's number of persons with special needs. This growth has greatly complicated the state's ability to coordinate its emergency management resources and activities.

(2) It is the intent of the Legislature to reduce the vulnerability of the people and property of this state; to prepare for efficient evacuation and shelter of threatened or affected persons; to provide for the rapid and orderly provision of relief to persons and for the coordination of activities relating to emergency preparedness, response, recovery and mitigation among and between agencies and officials of this state, with similar agencies and officials of other states, with local and federal governments, with interstate organizations and with the private sector.

(3) It is further the intent of the Legislature to promote the state's emergency preparedness, response, recovery and mitigation capabilities through enhanced coordination, long-term planning and adequate funding. State policy for responding to disasters is to support local emergency response

efforts. In the case of a major or catastrophic disaster, however, the needs of residents and communities will likely be greater than local resources. In these situations, the state must be capable of providing effective, coordinated and timely support to communities and the public. Therefore, the Legislature determines and declares that the provisions of this article fulfill an important state interest.

HISTORY: Laws, 1995, ch. 333, § 1, eff from and after July 1, 1995.

§ 33-15-3. Policy and purpose.

(a) Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action, and from natural, man-made or technological disasters, and in order to insure that preparations of this state will be adequate to deal with, reduce vulnerability to, and recover from such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health and safety, and to preserve the lives and property of the people of this state, it is hereby found and declared necessary: (1) To create a state emergency management agency, and to authorize the creation of local organizations for emergency management in the municipalities and counties of the state, and to authorize cooperation with the federal government and the governments of other states; (2) to confer upon the Governor, the agency and upon the executive heads or governing bodies of the municipalities and counties of the state the emergency powers provided herein; (3) to provide for the rendering of mutual aid among the municipalities and counties of the state, and with other states, and with the federal government with respect to the carrying out of emergency management functions and responsibilities; (4) to authorize the establishment of such organizations and the development and employment of such measures as are necessary and appropriate to carry out the provisions of this article; and (5) to provide the means to assist in the prevention or mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.

(b) It is further declared to be the purpose of this article and the policy of the state that all emergency management functions of this state be coordinated, to the maximum extent, with the comparable functions of the federal government, including its various departments and agencies, of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster or emergency, or both, that may occur as enumerated in this section.

HISTORY: Codes, 1942, § 8610-02; Laws, 1952, ch. 312, § 2; Laws, 1962, ch. 482, § 1; Laws, 1980, ch. 491, § 2; Laws, 1995, ch. 333, § 2, eff from and after July 1, 1995.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected an error in (a). The word "and" was deleted before the number "(3)" so that "...(2) to confer... the emergency powers provided herein; and (3) to provide for the rendering..." will read as "...(2) to confer... the emergency powers provided herein; (3) to provide for the rendering..." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Cross References — Civil emergencies, see § 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

OPINIONS OF THE ATTORNEY GENERAL

It would be inconsistent and counterproductive with policy of emergency management law for local agencies to develop plans for emergencies without approval of state emergency management agency; such "independent" plans could easily be inefficient and even antagonistic without some review process. McFatter, May 10, 1990, A.G. Op. #90-0300.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 383, 384.

§ 33-15-5. Definitions.

The following words, whenever used in this article shall, unless a different meaning clearly appears from the context, have the following meanings:

(a) "Agency" means the Mississippi Emergency Management Agency, created by Section 33-15-7.

(b) "Director" means the Director of Emergency Management, appointed pursuant to Section 33-15-7.

(c) "Emergency management" means the preparation for, the mitigation of, the response to, and the recovery from emergencies and disasters. Specific emergency management responsibilities include, but are not limited to:

(i) Reduction of vulnerability of people and communities of this state to damage, injury and loss of life and property resulting from natural, technological or man-made emergencies or hostile military paramilitary action.

(ii) Preparation for prompt and efficient response and recovery to protect lives and property affected by emergencies.

(iii) Response to emergencies using all systems, plans and resources necessary to preserve adequately the health, safety and welfare of persons or property affected by the emergency.

(iv) Recovery from emergencies by providing for the rapid and orderly start of restoration and rehabilitation of persons and property affected by emergencies.

(v) Provision of an emergency management system embodying all aspects of preemergency preparedness and postemergency response, recovery and mitigation.

(vi) Assistance in anticipation, recognition, appraisal, prevention and mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of public and private facilities and land use.

(d) "Civil defense," whenever it appears in the laws of the State of Mississippi, shall mean "emergency management" unless the context clearly indicates otherwise.

(e) "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States or upon receipt by the state of a warning from the federal government indicating that such an attack is probable or imminent.

(f) "State of emergency" means the duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons or property within the state caused by air or water pollution, fire, flood, storm, epidemic, earthquake, hurricane, resource shortages, or other natural or man-made conditions other than conditions causing a "state of war emergency," which conditions by reasons of their magnitude are or are likely to be beyond the control of the services, personnel, equipment and facilities of any single county and/or municipality and requires combined forces of the state to combat.

(g) "Local emergency" means the duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a county and/or municipality caused by such conditions as air or water pollution, fire, flood, storm, epidemic, earthquake, hurricane, resource shortages or other natural or man-made conditions, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of the political subdivision and require the combined forces of other subdivisions or of the state to combat.

(h) "Emergency" means any occurrence, or threat thereof, whether natural, technological, or man-made, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

(i) "Man-made emergency" means an emergency caused by an action against persons or society, including, but not limited to, emergency attack, sabotage, terrorism, civil unrest or other action impairing the orderly administration of government.

(j) "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought or an earthquake.

(k) "Technological emergency" means an emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident.

(*l*) "Local emergency management agency" means an organization created to discharge the emergency management responsibilities and functions of a political subdivision.

(m) "Disaster" means any natural, technological or civil emergency as defined in this section that causes damage of sufficient severity and magnitude to result in a declaration of an emergency by a county or municipality, the Governor or the President of the United States. Disasters shall be identified by the severity of resulting damage, as follows:

(i) "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement.

(ii) "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance.

(iii) "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance.

(n) "Disaster Reservist" means any person hired on a temporary basis pursuant to State Personnel Board policies and procedures regulating personal service contracts, that is hired to perform specific tasks related to a Governor's State of Emergency, or by an emergency or disaster declaration of the President of the United States, by the agency, and is assigned to perform such duties as may be required under the direction of the appropriate agency supervisor.

(o) "Emergency impact area" means the area of the state in which market conditions exist due to a state of emergency creating a likelihood that prices ordinarily charged for goods and services could be raised unfairly due to the underlying emergency.

(p) "Political subdivision" means a local government created by the State of Mississippi to assist in fulfilling the state's obligations. The term "political subdivision" includes levee districts.

HISTORY: Codes, 1942, §§ 8610-03, 8610-04; Laws, 1942, ch. 206; Laws, 1952, ch. 312, §§ 3, 4; Laws, 1980, ch. 491, § 3; Laws, 1983, ch. 420, § 1; Laws, 1995, ch. 333, § 3; Laws, 1998, ch. 338, § 1; Laws, 2000, ch. 413, § 1; Laws, 2006, ch. 433, § 2; Laws, 2014, ch. 434, § 1, eff from and after July 1, 2014.

Cross References — Authority of Governor to proclaim state of emergency upon finding that conditions described in § 33-15-5(g) exist, see § 33-15-11.

Authority of governing body of municipality or county to declare local emergency, see § 33-15-17.

Civil emergencies, see § 45-17-1 et seq.

Provision restricting the prices that may be charged for goods during a state of emergency, see § 75-24-25.

OPINIONS OF THE ATTORNEY GENERAL

Service charge imposed to fund E-911 system is intended for any legitimate expenditure to set up and operate E-911 system; monies derived from telephone fees charged to fund E-911 system may not be used to buy communications equipment for emergency management (civilian defense). Johnson, Sept. 6, 1990, A.G. Op. #90-0675.

If a board of supervisors finds and determines, consistent with fact, that a local emergency, as defined by Section 33-15-5(g) exists, then the board has the authority to declare a state of emergency and invoke the provisions of Section 33-15-1, et. seq. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

Upon activation by the Governor the Mississippi Emergency Management Agency (MEMA) may contract with medical personnel to provide emergency surgical services and provide the contract personnel with the full immunity provided for employees of the state. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 383 et seq.

§ 33-15-7. Mississippi Emergency Management Agency established; director and other personnel.

(a) There is hereby created within the executive branch of the state government a department called the Mississippi Emergency Management Agency with a director of emergency management who shall be appointed by the Governor; he shall hold office during the pleasure of the Governor and shall be compensated as determined by any appropriation that may be made by the Legislature for such purposes.

(b) The director, with the approval of the Governor, may employ such technical, clerical, stenographic and other personnel, to be compensated as provided in any appropriation that may be made for such purpose, and may make such expenditures within the appropriation therefor, or from other funds made available to him for purposes of emergency management, as may be necessary to carry out the purposes of this article.

(c) The director and other personnel of the emergency management agency shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for other state agencies.

(d) The director, subject to the direction and control of the Governor, shall be the executive head of the emergency management agency and shall be responsible to the Governor for carrying out the program for emergency management of this state. He shall coordinate the activities of all organizations for emergency management within the state, and shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this article as may be prescribed by the Governor.

HISTORY: Codes, 1942, § 8610-04; Laws, 1942, ch. 206; Laws, 1952, ch. 312, § 4; Laws, 1980, ch. 491, § 4; Laws, 1995, ch. 333, § 4, eff from and after July 1, 1995.

Cross References — Disposal of alternative housing units purchased through the Mississippi alternative Housing Pilot Program may be made by the Mississippi Emergency Management Agency, see § 29-9-9.

Director's membership on the surplus property procurement commission, see § 31-9-1.

Powers and duties of the emergency management agency concerning the transportation of radioactive waste, see §§ 45-14-51 et seq.

Civil emergencies, see § 45-17-1 et seq.

Notice of emergency, see § 49-17-27.

Membership of director on nuclear waste technical review committee, see § 57-49-11.

Application of guidelines of emergency management agency to disposal or storage of nuclear waste, see § 57-49-35.

OPINIONS OF THE ATTORNEY GENERAL

Upon activation by the Governor the Mississippi Emergency Management Agency (MEMA) may contract with medical personnel to provide emergency surgical services and provide the contract personnel with the full immunity provided for employees of the state. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

§ 33-15-9. Repealed.

Repealed by Laws, 1995, ch. 333, § 15, eff from and after July 1, 1995.

§ 33-15-9. [Codes, 1942, § 8610-05; Laws, 1942, ch. 206; Laws, 1952, ch. 312, § 5; Laws, 1980, ch. 491, § 5]

Editor's Notes — Former § 33-15-9 provided for the Mississippi Emergency Management Council.

§ 33-15-11. Emergency management powers of Governor.

(a) The Governor shall have general direction and control of the activities of the Emergency Management Agency and Council and shall be responsible for the carrying out of the provisions of this article, and in the event of a man-made, technological or natural disaster or emergency beyond local control, may assume direct operational control over all or any part of the emergency management functions within this state.

(b) In performing his duties under this article, the Governor is further authorized and empowered:

(1) To make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this article with due consideration of the plans of the federal government, and to enter into disaster assistance grants and agreements with the federal government under the terms as may be required by federal law.

(2) To work with the Mississippi Emergency Management Agency in preparing a comprehensive plan and program for the emergency management of this state, such plan and program to be integrated into and coordinated with the emergency management plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs for emergency management by the political subdivisions of this state, such local plans to be integrated into and coordinated with the emergency management plan and program of this state to the fullest possible extent.

(3) In accordance with such plan and program for emergency management of this state, to ascertain the requirements of the state or the political

subdivisions thereof for food or clothing or other necessities of life in the event of attack or natural or man-made or technological disasters and to plan for and procure supplies, medicines, materials and equipment, and to use and employ from time to time any of the property, services and resources within the state, for the purposes set forth in this article; to make surveys of the industries, resources and facilities within the state as are necessary to carry out the purposes of this article; to institute training programs and public information programs, and to take all other preparatory steps, including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(4) To cooperate with the President and the heads of the Armed Forces, and the Emergency Management Agency of the United States, and with the officers and agencies of other states in matters pertaining to the emergency management of the state and nation and the incidents thereof; and in connection therewith, to take any measures which he may deem proper to carry into effect any request of the President and the appropriate federal officers and agencies, for any action looking to emergency management, including the direction or control of (a) blackouts and practice blackouts, air raid drills, mobilization of emergency management forces, and other tests and exercises, (b) warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith, (c) the effective screening or extinguishing of all lights and lighting devices and appliances, (d) shutting off water mains, gas mains, electric power connections and the suspension of all other utility services, (e) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior and subsequent to drills or attack, (f) public meetings or gatherings under emergency conditions, and (g) the evacuation and reception of the civilian population.

(5) To take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this article and with the orders, rules and regulations made pursuant thereto.

(6) To employ such measures and give such directions to the state or local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this article or with the findings or recommendations of such boards of health by reason of conditions arising from enemy attack or the threat of enemy attack or natural, man-made or technological disaster.

(7) To utilize the services and facilities of existing officers and agencies of the state and of the political subdivisions thereof; and all such officers and agencies shall cooperate with and extend their services and facilities to the Governor as he may request.

(8) To establish agencies and offices and to appoint executive, technical, clerical and other personnel as may be necessary to carry out the provisions

of this article including, with due consideration to the recommendation of the local authorities, part-time or full-time state and regional area directors.

(9) To delegate any authority vested in him under this article, and to provide for the subdelegation of any such authority.

(10) On behalf of this state to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide basis or local political subdivision basis or with a neighboring state or province of a foreign country. Such mutual aid arrangements shall be limited to the furnishings or exchange of food, clothing, medicine and other supplies; engineering services; emergency housing; police services; national or state guards while under the control of the state; health, medical and related services; firefighting, rescue, transportation and construction services and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel and similar items for mobile support units, firefighting and police units and health units; and on such terms and conditions as are deemed necessary.

(11) To sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual aid arrangements with other states referred to above.

(12) To collect information and data for assessment of vulnerabilities and capabilities within the borders of Mississippi as it pertains to the nation and state's security and homeland defense. This information shall be exempt from the Mississippi Public Records Act, Section 25-61-1 et seq.

(13) Authorize any agency or arm of the state to create a special emergency management revolving fund, accept donations, contributions, fees, grants, including federal funds, as may be necessary for such agency or arm of the state to administer its functions of this article as set forth in the Executive Order of the Governor.

(14) To authorize the Commissioner of Public Safety to select, train, organize and equip a ready reserve of auxiliary highway patrolmen.

(15) To suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives and combustibles.

(16) To control, restrict and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price-fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods or services.

(17) To proclaim a state of emergency in an area affected or likely to be affected thereby when he finds that the conditions described in Section 33-15-5(g) exist, or when he is requested to do so by the mayor of a municipality or by the president of the board of supervisors of a county, or when he finds that a local authority is unable to cope with the emergency. Such proclamation shall be in writing and shall take effect immediately upon its execution by the Governor. As soon thereafter as possible, such proclamation shall be filed with the Secretary of State and be given

widespread notice and publicity. The Governor, upon advice of the director, shall review the need for continuing the state of emergency at least every thirty (30) days until the emergency is terminated and shall proclaim a reduction of area or the termination of the state of emergency at the earliest possible date that conditions warrant.

(18) To declare an emergency impact area when he finds that the conditions described in Section 33-15-5(o) exist. The proclamation shall be in writing and shall take effect immediately upon its execution by the Governor. As soon as possible, the proclamation shall be filed with the Secretary of State and be given widespread notice and publicity. The Governor shall review the need for continuing the declaration of emergency impact area at least every thirty (30) days until the emergency is terminated, and shall proclaim the reduction of the emergency impact area or termination of the declaration of emergency impact area at the earliest date or dates possible.

(c) In addition to the powers conferred upon the Governor in this section, the Legislature hereby expressly delegates to the Governor the following powers and duties in the event of an impending enemy attack, an enemy attack, or a man-made, technological or natural disaster where such disaster is beyond local control:

(1) To suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with a disaster or emergency.

(2) To transfer the direction, personnel or functions of state agencies, boards, commissions or units thereof for the purpose of performing or facilitating disaster or emergency services.

(3) To commandeer or utilize any private property if necessary to cope with a disaster or emergency, provided that such private property so commandeered or utilized shall be paid for under terms and conditions agreed upon by the participating parties. The owner of said property shall immediately be given a receipt for the said private property and said receipt shall serve as a valid claim against the Treasury of the State of Mississippi for the agreed upon market value of said property.

(4) To perform and exercise such other functions, powers and duties as may be necessary to promote and secure the safety and protection of the civilian population in coping with a disaster or emergency.

(d) This section does not authorize the Governor or a designee of the Governor to act in contravention of Section 33-7-303.

HISTORY: Codes, 1942, § 8610-06; Laws, 1952, ch. 312, § 6; Laws, 1962, ch. 482, § 2; Laws, 1980, ch. 491, § 6; Laws, 1983, ch. 420, § 2; Laws, 1995, ch. 333, § 5; Laws, 2000, ch. 413, § 2; Laws, 2003, ch. 473, § 1; Laws, 2006, ch. 433, § 3; Laws, 2014, ch. 443, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of (b)(16). The word "advise" was changed to "advice." The Joint Committee ratified the correction at its June 3, 2003, meeting.

Editor's Notes — Executive Order No. 1475, I., issued by Governor Tate Reeves on April 20, 2020, provides as follows:

"I. In order to cope with and respond to the COVID-19 emergency, pursuant to Miss. Code Ann. § 33-15-11(c)(1), the provision of Miss. Code Ann. § 77-2-7(1) requiring the Mississippi Public Service Commission to submit to the Governor the name of not less than three (3) and not more than six (6) qualified candidates for the position of executive director of the public utility staff is hereby suspended, and such submissions shall be provided by the Mississippi Public Service Commission to the Governor on or before June 1, 2020."

Cross References — Additional emergency powers of Governor with respect to a state of war emergency, see § 33-15-13.

Spending authority of commission of budget and accounting during state of emergency, see § 33-15-25.

Definition of "state of emergency," as declared by Governor in accordance with this section, as affecting Disaster Assistance Act of 1993, see § 33-15-305.

Use of Disaster Assistance Trust Fund monies for disaster relief when so tasked under provisions of this section, see § 33-15-307.

State agency, when requested by director in accordance with this section, must act according to its areas of responsibility to carry out purposes of Disaster Assistance Act, see § 33-15-309.

Requirement that fees collected from the issuance of a permit to transport radioactive waste be deposited in the emergency management revolving fund, see § 45-14-61.

Civil emergencies, see § 45-17-1 et seq.

Provision restricting the prices that may be charged for goods during a state of emergency, see § 75-24-25.

OPINIONS OF THE ATTORNEY GENERAL

Upon activation by the Governor the Mississippi Emergency Management Agency (MEMA) may contract with medical personnel to provide emergency surgical services and provide the contract personnel with the full immunity provided for employees of the state. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

The competitive bidding requirements of Section 31-7-13 are regulatory provisions that may be suspended pursuant to Section 33-15-11(c)(1). However, no authorization is found for a suspension of these provisions on a case-by-case basis. Stringer, Nov. 4, 2005, A.G. Op. 05-0534.

The competitive bidding requirements of Section 31-7-13 are regulatory provisions that may be suspended pursuant to Section 33-15-11(c)(1). However, no authorization is found for a suspension of these provisions on a case-by-case basis. Hudson, Dec. 27, 2005, A.G. Op. 05-0579.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense §§ 385, 386.

§ 33-15-13. Emergency powers of Governor.

(a) In the event of actual or impending enemy attack, as determined by the President, against the United States and the State of Mississippi, the Governor may proclaim that a state of war emergency exists, and thereafter the Governor shall have and may exercise for such period as such state of war emergency exists or continues, the following additional emergency powers:

(1) To enforce all laws, rules and regulations relating to emergency management and to assume direct operational control of all emergency management forces and helpers in the state;

(2) To purchase supplies and services for emergency management purposes, including aiding the populace, without necessity for advertising therefor; to call upon all persons, firms and corporations to furnish such supplies, services and facilities as they may control which may be needed for the protection of the public, and to enter into all necessary contracts and agreements as may be necessary with relation thereto, all or any provisions of law with reference to advertisements in such matters being expressly waived for this purpose;

(3) To utilize or commandeer any private property for the protection of the public or at the request of the President, the Armed Forces or the Emergency Management Agency of the United States including:

(A) For use during emergency only, all means of transportation and communication, except newspapers, or publications, or wire facilities leased or owned by news services, newspapers and other news publications;

(B) Food, clothing, equipment, materials, medicines, any supplies and stocks of fuel of whatever nature;

(C) Facilities including buildings and plants, for use during emergency only; in the event it shall become necessary to utilize any such facilities, plants or services, the operation thereof, if possible, shall be left in the hands of the owner, subject to direction of the Governor, and only such portion as may be essential for the protection of life and property, or the national defense, shall be commandeered or utilized;

(4) To sell, lend, give or distribute all or any such personal property utilized among the inhabitants of the state and to account to the State Treasurer for any funds received for such property;

(5) To perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population.

(b) Adequate compensation shall be paid for any property so utilized, taken or condemned. In case it shall become necessary to take or use any private property as provided above, the full faith and credit of the State of Mississippi shall be pledged to pay just compensation therefor. In case the Governor and the owner of any such property so utilized or taken shall not be able to agree on the compensation to be paid for use, damage or taking thereof, the amount of such compensation to be paid shall be determined in conformity with the statutes of this state relating to eminent domain procedures.

(c) All powers granted to the Governor by this section with respect to a state of war emergency shall terminate when the state of war emergency has been terminated by proclamation of the Governor or by concurrent resolution of the Legislature declaring it at an end.

HISTORY: Codes, 1942, § 8610-07; Laws, 1952, ch. 312, § 7; Laws, 1980, ch. 491, § 7; Laws, 1983, ch. 420, § 3; Laws, 1995, ch. 333, § 6, eff from and after July 1, 1995.

Cross References — Eminent domain generally, see §§ 11-27-1 et seq.

Spending authority of commission of budget and accounting during state of war emergency, see § 33-15-25.

Civil emergencies, see § 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 383.

§ 33-15-14. Preparation and maintenance of state comprehensive emergency management plan.

(1) The agency is responsible for maintaining a comprehensive statewide program of emergency management. The agency is responsible for coordination with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards and with private agencies that have a role in emergency management.

(2) In performing its duties under this article, the agency shall:

(a) Work with the Governor, or his representative, in preparing a State Comprehensive Emergency Management Plan of this state, which shall be integrated into and coordinated with the emergency management plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs for emergency management by the political subdivisions of the state, such local plans to be integrated into and coordinated with the emergency plan and program of this state. The plan must contain provisions to ensure that the state is prepared for emergencies and minor, major and catastrophic disasters, and the agency shall work closely with local governments and agencies and organizations with emergency management responsibilities in preparing and maintaining the plan. The State Comprehensive Emergency Management Plan will be operations oriented and:

(i) Include an evacuation component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of evacuation activities. This component must, at a minimum: ensure coordination pertaining to evacuees crossing county lines; set forth procedures for directing people caught on evacuation routes to safe shelter; and establish policies and strategies for emergency medical evacuations.

(ii) Include a shelter component that includes specific regional and interregional planning provisions and promotes coordination of shelter activities between the public, private and nonprofit sectors. This component must, at a minimum: contain strategies to ensure the availability of adequate public shelter space in each region of the state; establish strategies for refuge-of-last-resort programs; provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a postdisaster communications system for public shelters; establish model shelter guidelines for operations, registration, inventory, power generation capability, information management and staffing; and set forth policy guidance for sheltering people with special needs.

(iii) Include a postdisaster response and recovery component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of postdisaster response and recovery activities. This component must provide for postdisaster response and recovery strategies according to whether a disaster is minor, major or catastrophic. The postdisaster response and recovery component must, at a minimum: establish the structure of the state's postdisaster response and recovery organization; establish procedures for activating the state's plan; set forth policies used to guide postdisaster response and recovery activities; describe the chain of command during the postdisaster response and recovery period; describe initial and continuous postdisaster response and recovery actions; identify the roles and responsibilities of each involved agency and organization; provide for a comprehensive communications plan; establish procedures for monitoring mutual aid agreements; provide for rapid impact assessment teams; ensure the availability of an effective statewide urban search and rescue program coordinated with the fire services; ensure the existence of a comprehensive statewide medical care and relief plan administered by the State Department of Health; and establish systems for coordinating volunteers and accepting and distributing donated funds and goods.

(iv) Include additional provisions addressing aspects of preparedness, response and recovery, as determined necessary by the agency.

(v) Address the need for coordinated and expeditious deployment of state resources, including the Mississippi National Guard. In the case of an imminent major disaster, procedures should address predeployment of the Mississippi National Guard, and, in the case of an imminent catastrophic disaster, procedures should address predeployment of the Mississippi National Guard and the United States Armed Forces. This subparagraph (v) does not authorize the agency to call out and deploy the Mississippi National Guard, which authority and determination rests solely with the Governor.

(vi) Establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and can communicate emergency response decisions.

(vii) Establish guidelines and schedules for annual exercises that evaluate the ability of the state and its political subdivisions to respond to minor, major and catastrophic disasters and support local emergency management agencies. Such exercises shall be coordinated with local governments and, to the extent possible, the federal government.

(viii)1. Assign lead and support responsibilities to state agencies and personnel for emergency support functions and other support activities.

2. The agency shall prepare an interim postdisaster response and recovery component that substantially complies with the provisions of this paragraph (a). Each state agency assigned lead responsibility for an emergency support function by the State Comprehensive Emergency Management Plan shall also prepare a detailed operational plan needed to implement its responsibilities. The complete State Comprehensive Emergency Management Plan shall be submitted to the Governor no later than January 1, 1996, and on January 1 of every even-numbered year thereafter.

(b) Adopt standards and requirements for county emergency management plans. The standards and requirements must ensure that county plans are coordinated and consistent with the State Comprehensive Emergency Management Plan. If a municipality elects to establish an emergency management program, it must adopt a city emergency management plan that complies with all standards and requirements applicable to county emergency management plans.

(c) Assist political subdivisions in preparing and maintaining emergency management plans.

(d) Review periodically political subdivision emergency management plans for consistency with the State Comprehensive Emergency Management Plan and standards and requirements adopted under this section.

(e) Make recommendations to the Legislature, building code organizations and political subdivisions for zoning, building and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures; and other preparedness, prevention and mitigation measures designed to eliminate emergencies or reduce their impact.

(f) In accordance with the State Comprehensive Emergency Management Plan and program for emergency management, ascertain the requirements of the state, its political subdivisions and the Mississippi Band of Choctaw Indians for equipment and supplies of all kinds in the event of an emergency; plan for and either procure supplies, medicines, materials and equipment or enter into memoranda of agreement or open purchase orders that will ensure their availability; and use and employ from time to time any of the property, services and resources within the state in accordance with this article.

(g) Anticipate trends and promote innovations that will enhance the emergency management system.

(h) Prepare and distribute to appropriate state and local officials catalogs of federal, state and private assistance programs.

(i) Implement training programs to improve the ability of state and local emergency management personnel to prepare and implement emergency management plans and programs, and require all local civil defense directors or emergency management directors to complete such training as a condition to their authority to continue service in their emergency management positions.

(j) Review periodically emergency operating procedures of state agencies and recommend revisions as needed to ensure consistency with the State Comprehensive Emergency Management Plan and program.

(k) Prepare, in advance whenever possible, such executive orders, proclamations and rules for issuance by the Governor as are necessary or appropriate for coping with emergencies and disasters.

(*l*) Cooperate with the federal government and any public or private agency or entity in achieving any purpose of this article.

(m) Assist political subdivisions with the creation and training of urban search and rescue teams and promote the development and maintenance of a state urban search and rescue program.

(n) Delegate, as necessary and appropriate, authority vested in it under this article and provide for the subdelegation of such authority.

(o) Require each county or municipality to designate an agent for working with the agency in the event of a natural disaster. The county or municipality may designate any person as agent who has completed training programs required of emergency management directors.

(p) Report biennially to the Governor and the President of the Senate, and the Speaker of the House of Representatives, no later than January 1 of every odd-numbered year, the status of the emergency management capabilities of the state and its political subdivisions.

(q) In accordance with Section 25-43-1 et seq., create, implement, administer, promulgate, amend and rescind rules, programs and plans needed to carry out the provisions of this article with due consideration for, and in cooperating with, the plans and programs of the federal government.

(r) Have the sole power and discretion to enter into, sign, execute and deliver long-term or multiyear leases of real and personal property with other state and federal agencies.

(s) Do other things necessary, incidental or appropriate for the implementation of this article.

(t) In accordance with Section 33-15-15, create, implement, administer, promulgate, amend and rescind rules regarding the development of the Mississippi Disaster Reservist Program.

(u) Unless otherwise instructed by the Governor, sponsor and develop mutual aid plans and agreements between the political subdivisions of the state and the Mississippi Band of Choctaw Indians similar to the mutual aid arrangements with other states referenced in Section 33-15-11(b) (10).

HISTORY: Laws, 1995, ch. 333, § 7; Laws, 2000, ch. 413, § 3; Laws, 2002, ch. 475, § 1; Laws, 2004, ch. 302, § 1; Laws, 2014, ch. 434, § 3; Laws, 2015, ch. 336, § 2, eff from and after passage (approved Mar. 13, 2015).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected a enacting error in the paragraph (a) of subsection (2). The word "the" was inserted preceding "Governor" in the first sentence. The Joint Committee ratified the correction at its July 8, 2004, meeting.

Cross References — Authority to call out the Mississippi National Guard, see § 33-3-1.

"Civil defense," whenever it appears in the laws of the State of Mississippi, means "emergency management" unless the context clearly indicates otherwise, see § 33-15-5(d).

§ 33-15-15. Mobile support units.

(a) The agency is authorized to provide, within or without the state, such support from available personnel, equipment and other resources of state agencies and the political subdivisions of the state as may be necessary to reinforce emergency management agencies in areas stricken by emergency. Such support shall be rendered with due consideration of the plans of the federal government, this state, the other states and of the criticalness of the existing situation. Emergency management support forces shall be called to duty upon orders of the agency and shall perform their functions in any part of the state, or, upon the conditions specified in this section, in other states.

(b) Personnel of emergency management support forces while on duty, whether within or without the state, shall:

(1) If they are employees of the state, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment;

(2) If they are employees of a political subdivision of the state, and whether serving within or without such political subdivision, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment; and

(3) If they are not employees of the state or a political subdivision thereof, be entitled to compensation by the state at a rate commensurate with their duties and responsibilities and to the same rights and immunities as are provided by law for the employees of this state.

All personnel of emergency management support forces shall, while on duty, be subject to the operational control of the authority in charge of emergency management activities in the area in which they are serving, and shall be reimbursed for all actual and necessary travel and subsistence expenses, and for death, disability or injury to such personnel while on such emergency duty as a member of an emergency management support force, the state shall pay compensation to the heirs in event of death or the individual in event of injury or disability in accordance with payment schedules contained in the Mississippi Workers' Compensation Law.

(c) The state shall reimburse a political subdivision for the actual and necessary travel, subsistence and maintenance expenses of employees of such political subdivision while serving as members of an emergency management support force, and for all payments for death, disability or injury of such employees incurred in the course of such duty, and for all losses of or damage to supplies and equipment of such political subdivision resulting from the operation of such emergency management support force. The state may also reimburse a political subdivision for employees' overtime while deployed as members of an emergency management support force and backfill of deployed forces when determined by the director to be necessary to avoid serious financial consequences for the political subdivision providing support and when requested by the chief elected official of the political subdivision stating the circumstances for the request.

(d) Whenever an emergency management support force of another state shall render aid in this state pursuant to the orders of the governor of its home state and upon the request of the Governor of this state, the personnel thereof shall have the powers, duties, rights, privileges and immunities of emergency management personnel serving in similar capacities in this state, except compensation, and this state shall reimburse such other state for the compensation paid and actual and necessary travel, subsistence and maintenance expenses of the personnel of such emergency management support force while rendering such aid, and for all payments for death, disability or injury of such personnel incurred in the course of rendering such aid, and for all losses of or damage to supplies and equipment of such other state or a political subdivision thereof resulting from the rendering of such aid; provided, that the laws of such other state contain provisions substantially similar to this section.

(e) No personnel of emergency management support forces of this state shall be ordered by the Governor to operate in any other state unless the laws of such other state contain provisions substantially similar to this section.

HISTORY: Codes, 1942, § 8610-08; Laws, 1952, ch. 312, § 8; Laws, 1980, ch. 491, § 8; Laws, 1995, ch. 333, § 8; Laws, 2006, ch. 374, § 1, eff from and after passage (approved Mar. 13, 2006).

Cross References — Civil emergencies, see § 45-17-1 et seq.
Workers' compensation law generally, see §§ 71-3-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Upon activation by the Governor the Mississippi Emergency Management Agency (MEMA) may contract with medical personnel to provide emergency surgical services and provide the contract personnel with the full immunity provided for employees of the state. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

RESEARCH REFERENCES

CJS.
99 C.J.S., Workmen's Compensation § 117.

§ 33-15-17. Local organization of emergency management.

(a) Each county and municipality, or counties and the municipalities therein acting jointly, or two (2) or more counties acting jointly, of this state are hereby authorized and directed to establish a local organization for emergency management in accordance with the state emergency management plan and program, if required and authorized so to do by such state emergency management plan. Each local organization for emergency management shall have a director who shall be appointed by the governing body of the political subdivision, or political subdivisions acting jointly, and who shall have direct responsibility for the organization, administration and operation of such local organization for emergency management, subject to the direction and control of such governing body. Each local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of the state emergency management plan. Each county shall develop an emergency management plan and program that is coordinated and consistent with the State Comprehensive Emergency Management Plan and program. Counties that are part of an interjurisdictional emergency management agreement entered into pursuant to this section shall cooperatively develop an emergency management plan and program that is coordinated and consistent with the state emergency management plan and program.

(b) In carrying out the provisions of this article each county and municipality, or the two (2) acting jointly, or two (2) or more counties acting jointly, where there is joint organization, in which any disaster as described in Section 33-15-5 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each county and municipality is authorized to exercise the powers vested under this section in the light of the exigencies of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes and the appropriation and expenditure of public funds.

(c) Each county and each municipality, or two (2) or more counties acting jointly, shall have the power and authority:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any enemy attack or man-made, technological or natural disasters; and to direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies;

(2) To appoint, employ, remove, or provide, with or without compensation, air raid wardens, rescue teams, auxiliary fire and police personnel, and other emergency management workers;

(3) To establish, as necessary, a primary and one or more secondary

emergency operating centers to provide continuity of government, and direction and control of emergency operation during an emergency;

(4) To donate public funds, supplies, labor and equipment to assist any governmental entity in a county or municipality in which a disaster as described in Section 33-15-5 occurs;

(5) Subject to the order of the Governor, or the chief executive of the political subdivision, to assign and make available for duty, the employees, property or equipment of the subdivision relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency management purposes either within or outside of the limits of the subdivision;

(6) Subject to the order of the chief executive of the county or municipality or the Governor to order the evacuation of any area subject to an impending or existing enemy attack or man-made, technological or natural disaster;

(7) Subject to the order of the chief executive of the county or municipality or the Governor, to control or restrict egress, ingress and movement within the disaster area to the degree necessary to facilitate the protection of life and property;

(8) To enter into mutual aid agreements in the manner authorized by Section 33-15-19.

(d) A local emergency as defined in Section 33-15-5 may be proclaimed by the mayor or governing body of a municipality, or the president of the board of supervisors of a county or the governing body of a county. In the event a local emergency is proclaimed by the mayor of a municipality or the president of the board of supervisors of a county, the governing body of such municipality or the governing body of such county shall review and approve or disapprove the need for continuing the local emergency at its first regular meeting following such proclamation or at a special meeting legally called for such review. Thereafter, the governing body of such municipality or the governing body of such county shall review the need for continuing the local emergency at least every thirty (30) days until such local emergency is terminated, and shall proclaim the termination of such local emergency at the earliest possible date that conditions warrant. During a local emergency, the governing body of a political subdivision may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread notice and publicity. The authorization granted by this section to impose a curfew shall not be construed as restricting in any manner the existing authority to impose a curfew pursuant to police power for any other lawful purpose.

HISTORY: Codes, 1942, § 8610-09; Laws, 1942, ch. 206; Laws, 1952, ch. 312, § 9; Laws, 1980, ch. 491, § 9; Laws, 1983, ch. 420, § 4; Laws, 1995, ch. 333, § 9; Laws, 2005, 5th Ex Sess, ch. 20, § 1; Laws, 2010, ch. 347, § 1; Laws, 2012, ch. 359, § 2, eff from and after July 1, 2012; Laws, 2019, ch. 364, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (d), inserted "or the president of the board of supervisors of a county" in the first and second sentences, inserted "or the governing body of such county" in the second sentence, and inserted "of such municipality or the governing body of such county" in the third sentence.

Cross References — Definition of "local emergency," as proclaimed in accordance with this section, as affecting Disaster Assistance Act of 1993, see § 33-15-305.

Civil emergencies, see § 45-17-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 33-15-17 makes it clear that Civil Defense Director exercises power under control and direction of governing authority that hired Director; also that, in absence of stated term in contract, person appointed as Civil Defense Director serves until removed by appointing authority. Jones, Apr. 7, 1993, A.G. Op. #93-0173.

The statute authorizes the Harrison County Board of Supervisors, under its emergency powers, acting through its local organization for emergency management, to order the evacuation of boats from marinas along the coast line of Harrison County in the event of an emergency, such as a hurricane. Meadows, September 4, 1998, A.G. Op. #98-0560.

An emergency management agency may purchase with funds appropriated to it by the county and distribute to the general public within its jurisdiction such written or printed information regarding emergency actions and emergency assistance as it finds, consistent with fact, and encompasses such findings of fact in an order finding the necessity for such purpose, are necessary and proper for emergency management purposes and are neither inconsistent nor in conflict with the policies and plans set by the federal and state emergency management agencies. Souderes, May 21, 1999, A.G. Op. #99-0251.

Pursuant to Section 33-15-17(c)(4), the county has the authority to contract directly with medical personnel and, in so doing, provide that personnel with the full immunity afforded a county employee pursuant to Section 33-15-21. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

Where, as result of a disaster, counties enter into contractual agreements with FEMA wherein FEMA agrees to pay overtime or additional compensations to certain personnel, if such agreements are spread upon the minutes of the board of supervisors, and if the board makes findings that such agreements constitute an employment contract applicable to exempt employees, then such payments would be permissible under Section 33-15-17. Hudson, Sept. 27, 2005, A.G. Op. 05-0477.

Even though a county board of supervisors faced an extreme financial crisis as a result of Hurricane Katrina, as a matter of law, given the mandatory language of Section 27-3-52, there was no authority for the board to exercise discretion in the awarding of compensation increases provided therein. Meadows, Nov. 14, 2005, A.G. Op. 05-0551.

In light of the authority contained in Section 33-15-17(b), a city was authorized to pay city firemen for the use of their privately owned four wheelers in accordance with rates approved by FEMA and the governing authorities of the municipality. McCreary, Aug. 11, 2006, A.G. Op. 06-0370.

Installation of GPS or other electronic tracking devices on county vehicles for emergency management purposes does not violate privacy rights under state law. Disclosure of the presence of such devices to the drivers and occupants of county vehicles is a matter of county policy. Drane, March 16, 2007, A.G. Op. #07-00105, 2007 Miss. AG LEXIS 74.

§ 33-15-19. Mutual aid arrangements.

(a) The governing body of a municipality or county of the state is authorized to participate in the Statewide Mutual Aid Compact (SMAC) established by the agency as a mechanism to standardize mutual aid arrangements between jurisdictions within the state. The agency is authorized to present the SMAC to the Mississippi Band of Choctaw Indians' Tribal Council for its consideration and approval. SMAC provides guidelines for requesting and receiving mutual aid, liability protection and reimbursement procedures for providing such aid. The governing body of each political subdivision of the state is strongly encouraged to sign and ratify the SMAC for mutual aid between their jurisdiction and other cities or counties within the state as well as the Mississippi Band of the Choctaw Indians. A copy of this agreement must be signed by the senior elected official of the jurisdiction and the director and will be maintained on file by the agency.

(b) Political subdivisions of the state, including their fire service agencies, are also authorized to develop and enter into mutual aid agreements with other jurisdictions outside the state for reciprocal emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted. This shall also include emergencies outside the state in which it is geographically reasonable for a political subdivision of this state, or its fire service, to respond. Copies of the agreements shall be sent to the agency and shall be consistent with the State Comprehensive Emergency Management Plan and program, and in time of emergency it shall be the duty of each local emergency management organization to render assistance in accordance with the provisions of such mutual aid agreements.

(c) The Governor may enter into compacts with any state or group of states if he finds that joint action with that state or group of states is desirable in meeting common intergovernmental problems of emergency management planning or emergency prevention, mitigation, response and recovery.

(1) Political subdivisions of the state, including their fire service agencies, shall not be liable for the death of or any injury to persons, or damage to property and all other protections provided in Section 33-15-21(a), as a result of mutual aid agreements entered into pursuant to this section.

(2) Employees of a political subdivision of this state shall have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment and all other benefits provided by Section 33-15-15.

HISTORY: Codes, 1942, § 8610-10; Laws, 1952, ch. 312, § 10; Laws, 1980, ch. 491, § 10; Laws, 1995, ch. 333, § 10; Laws, 2006, ch. 374, § 2; Laws, 2012, ch. 359, § 1; Laws, 2014, ch. 434, § 2; Laws, 2015, ch. 336, § 1, eff from and after passage (approved Mar. 13, 2015).

Cross References — Civil emergencies, see § 45-17-1 et seq.

§ 33-15-21. Immunity.

(a) Neither the state nor any political subdivision thereof, nor other agencies, nor, except in cases of willful misconduct, the agents, employees, or representatives of any of them engaged in any emergency management activities, while complying with or attempting to comply with this article or any rule or regulation promulgated pursuant to the provisions of this article, shall be liable for the death of or any injury to persons, or damage to property, as a result of such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this article, or under the workmen's compensation law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of congress.

(b) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons or providing assistance to persons during or in recovery from an actual, impending, mock or practice attack or any man-made, technological or natural disaster, together with his successors in interest, if any, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises by virtue of its use for emergency management purposes, or loss of, or damage to, the property of such person.

HISTORY: Codes, 1942, § 8610-11; Laws, 1952, ch. 312, § 11; Laws, 1980, ch. 491, § 11, eff from and after passage (approved May 9, 1980).

Editor's Notes — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

Cross References — Civil emergencies, see § 45-17-1 et seq.

Workers' Compensation Law generally, see §§ 71-3-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Construction with other laws.
2. Mississippi Department of Transportation.

1. Construction with other laws.

Mississippi Tort Claims Act (MTCA) does not override the Mississippi Emergency Management Law's (MEML) grant of immunity applicable to emergency-management situations because the MEML applies to limited subject matter, while the MTCA covers a multitude of subjects and circumstances, and, in a qualifying emergency situation and with no willful misconduct, there is absolute governmental immunity under the MEML, in which circumstances and in the event of willful misconduct by a state agency, courts should proceed to determine whether there is immunity under the MTCA. Miss. DOT v. Musgrove, 294 So. 3d 609, 2020 Miss. LEXIS 92 (Miss. 2020).

Property owners' negligence suit fell within the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 to 11-46-23, because it was a claim against state agencies, but because Miss. Code Ann. § 11-46-9(1)(f) of the MTCA and Miss. Code Ann. § 33-15-21 of the Mississippi Emergency Management Law (MEML), Miss. Code Ann. §§ 33-15-1 to 33-15-53, working together, the Mississippi Port Authority and Mississippi Development Authority were immune from liability stemming from emergency management activities; accordingly, the MTCA had not superseded the MEML as the two could be read in harmony. Parsons

v. Miss. State Port Auth. at Gulfport, 996 So. 2d 165, 2008 Miss. App. LEXIS 705 (Miss. Ct. App. 2008).

2. Mississippi Department of Transportation.

Mississippi Department of Transportation (MDOT) was entitled to summary judgment for allegedly failing to maintain a road because (1) the Mississippi Emergency Management Law (MEML) applied, requiring a showing of MDOT's willful misconduct to defeat MDOT's absolute immunity in an emergency, (2) no intentional misconduct was shown, as putting gravel on a road in response to an emergency and failing to warn was, at most, negligence for which the MEML barred liability, and (3) nothing showed MDOT knew of a prior accident in the same general location. Miss. DOT v. Musgrove, 294 So. 3d 609, 2020 Miss. LEXIS 92 (Miss. 2020).

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to Section 33-15-17(c)(4), the county has the authority to contract directly with medical personnel and, in so doing, provide that personnel with the full immunity afforded a county employee pursuant to Section 33-15-21. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

Upon activation by the Governor the Mississippi Emergency Management Agency (MEMA) may contract with medical personnel to provide emergency surgical services and provide the contract personnel with the full immunity provided for employees of the state. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

RESEARCH REFERENCES

ALR.

Official immunity of state National Guard members. 52 A.L.R.4th 1095.

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 387.

§ 33-15-23. Funds.

For the purpose of paying any expenses of its local emergency management organization, or for paying any expenses of the emergency management program, any board of supervisors of a county or any governing body of a municipality is authorized to expend any available funds from the general fund of such county or municipality.

HISTORY: Codes, 1942, § 8610-12; Laws, 1952, ch. 312, § 12; Laws, 1980, ch. 491, § 12, eff from and after passage (approved May 9, 1980).

Cross References — Civil emergencies, see § 45-17-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

If city participated in creation of civil defense agency, or has by interlocal agreement assumed some of burden of agency, then city may expend funds to defray expenses of agency; agency could make plans for evacuation in event of accident at nuclear plant and once approved by proper authorities plans could be reasonably advertised in order to make public aware of what to do in event of accident. McFatter, May 10, 1990, A.G. Op. #90-0300.

If a county board of supervisors finds, as a matter of fact, that travel expenses incurred by non-county personnel for specific training that will benefit the county are necessary and reasonable in relation to the benefit gained by the county, and not for individual benefit, the expenses may be paid out of the county general fund. Scott, Jan. 29, 1992, A.G. Op. #91-0976.

Payment of any certification fee charged by a certifying body is a prohibited use of the county general fund, as the resultant certificate would be in the name of an individual and not the county. Scott, Jan. 29, 1992, A.G. Op. #91-0976.

This section permits a board of supervisors, should such board of supervisors find as a matter of fact and spread such finding upon its minutes, that the payment of travel expenses of members of a local emergency management organization are necessary and reasonable in relation to the benefit gained by the county, said board of supervisors may pay travel expenses of the members of said organization to come to and from the headquarters of the organization. Shaw, Nov. 14, 1997, A.G. Op. #97-0735.

An emergency management agency may purchase with funds appropriated to it by the county and distribute to the general public within its jurisdiction such written or printed information regarding emergency actions and emergency assistance as it finds, consistent with fact, and encompasses such findings of fact in an order finding the necessity for such purpose, are necessary and proper for emergency management purposes and are neither inconsistent nor in conflict with the policies and plans set by the federal and state emergency management agencies. Souderes, May 21, 1999, A.G. Op. #99-0251.

§ 33-15-25. Matching funds.

(a) The Governor of the State of Mississippi is authorized to enter into agreements with the federal government for the purpose of matching any federal funds that may be made available for emergency management purposes, which shall include purchasing emergency management equipment and supplies, to the state on a matching basis. Provided, that no agreement shall obligate the state for an amount greater than the appropriation available for such purpose. The state's portion of the purchase price of any emergency management equipment may be made available from any appropriation made for such purposes.

(b) Any county board of supervisors or municipal governing body may enter into agreement with the federal government with approval of the State Director of Emergency Management for matching funds which may be made available for emergency management purposes, which shall include purchasing emergency management equipment and supplies, by such county or municipality in conjunction with any federal matching program and funds may be expended from the general fund of such county or municipality or from such other funds as may be available to such county or municipality for emergency management purposes in order to provide the county or municipal portion of funds necessary to carry out such matching agreement.

(c) The agency may withhold from any county board of supervisors, municipality or not-for-profit entity a portion or all of a subgrant whenever the agency determines that the county, municipality or not-for-profit entity owes a refund on any past subgrant project that was not completed as required.

HISTORY: Codes, 1942, § 8610-13; Laws, 1952, ch. 312, § 13; Laws, 1980, ch. 491, § 13; Laws, 1983, ch. 420, § 5; Laws, 1984, ch. 488, § 197; Laws, 1995, ch. 333, § 11; Laws, 2002, ch. 475, § 2, eff from and after July 1, 2002.

Editor's Notes — Laws of 1984, ch. 488, § 341 provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 383.

§ 33-15-27. Authority to accept services, gifts, grants and loans.

(a) Whenever the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for purposes of emergency management, the state, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer and upon such acceptance the Governor of the state or governing body of such political subdivision, may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(b) Whenever any person, firm or corporation shall offer to the state or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for purposes of emergency management, the state, acting through the Governor, or such political subdivision, acting through its governing body may accept such offer and upon such acceptance the Governor of the state or governing body of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer.

HISTORY: Codes, 1942, § 8610-14; Laws, 1952, ch. 312, § 14; Laws, 1980, ch. 491, § 14, eff from and after passage (approved May 9, 1980).

Cross References — Civil emergencies, see § 45-17-1 et seq.

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County may, with consent of Governor, pay landowner for removal of structure necessary to comply with flood damage prevention ordinance so as to allow county to participate in National Flood Insurance Program. Barry, Dec. 16, 1992, A.G. Op. #92-0892.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 383.

§ 33-15-29. Utilization of existing services and facilities.

(a) In carrying out the provisions of this article, the Governor and the executive officers or governing bodies of the political subdivisions of the state are directed to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the state and of the political subdivisions thereof to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the Governor and to the emergency management organizations of the state or such subdivisions upon request.

(b) State agencies in carrying out their assigned disaster or emergency assignments shall be reimbursed their expenses for emergency or disaster-related duties which may include the payment of overtime and the employment of temporary personnel by such agencies in the same manner as authorized in Sections 33-15-301 et seq., 43-41-17 [repealed] and 43-41-319 [repealed], and as provided by Section 43-41-701 [repealed].

HISTORY: Codes, 1942, § 8610-15; Laws, 1942, ch. 206; Laws, 1952, ch. 312, § 15; Laws, 1980, ch. 491, § 15; Laws, 1983, ch. 420, § 6; Laws, 1995, ch. 333, § 12, eff from and after July 1, 1995.

Editor's Notes — Former § 43-41-17, referred to in subsection (b), provided for the reimbursement of state agencies for certain expenses for emergency or disaster related duties and was repealed by Laws of 1984, ch. 488, § 335, effective from and after July 1, 1984.

Former § 43-41-319, referred to in subsection (b), related to temporary housing and was repealed by Laws of 2004, ch. 405, effective from and after July 1, 2004.

Former § 43-41-701, referred to in subsection (b), related to financial assistance to state agencies for disaster and emergency assistance and was repealed by Laws of 1984, ch. 488, § 337, effective from and after July 1, 1984.

Cross References — Civil emergencies, see § 45-17-1 et seq.

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A county tourism commission may continue to pay the salaries of staff employees, from the commission's room tax revenues, while those employees are temporarily reassigned to assist with disaster recovery in the wake of Hurricane Katrina. Keating, Jan. 13, 2006, A.G. Op. 05-0620.

§ 33-15-31. Orders, rules and regulations.

(a) The governing bodies of the political subdivisions of the state and other agencies designated or appointed by the Governor are authorized and empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency management purposes and to supplement the carrying out of the provisions of this article, but not inconsistent with any orders, rules and regulations promulgated by the Governor or by any state agency exercising a power delegated to it by him.

(b) All orders, rules, and regulations promulgated by the Governor, the Mississippi Emergency Management Agency or by any political subdivision or other agency authorized by this article to make orders, rules and regulations, shall have the full force and effect of law, when, in the event of issuance by the Governor, or any state agency, a copy thereof is filed in the office of the Secretary of State, or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk of the political subdivision or agency promulgating the same. All existing laws, ordinances, rules and regulations inconsistent with the provisions of this article, or of any order, rule, or regulation issued under the authority of this article, shall be suspended during the period of time and to the extent that such conflict, disaster or emergency exists.

(c) In order to attain uniformity so far as practicable throughout the country in measures taken to aid emergency management, all action taken under this article and all orders, rules and regulations made pursuant thereto, shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations, and requests of federal authorities relevant thereto and, to the extent permitted by law, shall be consistent with such orders, rules, regulations, actions, recommendations and requests.

HISTORY: Codes, 1942, § 8610-16; Laws, 1952, ch. 312, § 16; Laws, 1980, ch. 491, § 16; Laws, 1995, ch. 333, § 13, eff from and after July 1, 1995.

Editor's Notes. – Executive Order No. 1474, II., issued by Governor Tate Reeves on April 20, 2020, provides as follows:

"II. Pursuant to Miss. Code Ann. § 33-15-31(a), the Commissioner of the Department of Public Safety may execute his authority under Miss. Code Ann. § 45-1-3 to further address any issues that arise as a result of the Driver Service Bureau's limited services during the State of Emergency."

Cross References — Penalty for violation of any rule, order or regulation made pursuant to this article, see § 33-15-43.

Civil emergencies, see § 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

RESEARCH REFERENCES

Am. Jur.

53A Am. Jur. 2d, Military, and Civil Defense § 383.

§ 33-15-33. Political activity prohibited.

No individual employed by or for an organization for emergency management established under the authority of this article shall, while acting under authority of his position or representing himself in his official capacity, participate in any form of political activity, and no such organization shall be employed directly or indirectly for political purposes.

HISTORY: Codes, 1942, § 8610-17; Laws, 1952, ch. 312, § 17; Laws, 1980, ch. 491, § 17, eff from and after passage (approved May 9, 1980).

Cross References — Penalty for violation of this section, see § 33-15-43.

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No statute or rule requires employee of county civil defense to resign in order to be candidate for county school board of education, provided that employee carries out duties of his or her job and does not engage in any political activities during working hours; however county civil defense employee should avoid campaigning in any official capacity relating to job with civil defense. Shepard Aug. 26, 1993, A.G. Op. #93-0422.

Since office of school board member and civil defense employee are both in executive branch of government, there is no separation of powers violation in one person serving in both positions. Shepard Aug. 26, 1993, A.G. Op. #93-0422.

RESEARCH REFERENCES

Am. Jur.
53A Am. Jur. 2d, Military, and Civil Defense § 383.

§ 33-15-35. Repealed.

Repealed by Laws, 1980, ch. 491, § 37, eff from and after May 9, 1980.

§ 33-15-35. [Codes, 1942, § 8610-18; Laws, 1952, ch. 312, § 18; Laws, 1962, ch. 482, § 3]

Editor's Notes — Former § 33-15-33 required loyalty oaths by persons employed or associated with civil defense.

§ 33-15-37. Enforcement.

It shall be the duty of every organization for emergency management established pursuant to this article and of the officers thereof to execute and enforce such orders, rules and regulations as may be made by the Governor under authority of this article. Each such organization shall have available for inspection at its office all orders, rules and regulations made by the Governor, or under his authority.

HISTORY: Codes, 1942, § 8610-19; Laws, 1952, ch. 312, § 19; Laws, 1980, ch. 491, § 18, eff from and after passage (approved May 9, 1980).

Cross References — Civil emergencies, see § 45-17-1 et seq.
Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

§ 33-15-39. Peace officers.

Any county or municipality, through its governing board, and with the approval of the sheriff in a county, or the chief of police in a municipality, may confer upon members of emergency management auxiliary police units, the powers of peace officers, subject to such restrictions as shall be imposed.

HISTORY: Codes, 1942, § 8610-20; Laws, 1952, ch. 312, § 20; Laws, 1980, ch. 491, § 19, eff from and after passage (approved May 9, 1980).

Cross References — Civil emergencies, see § 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

§ 33-15-41. Arrests.

Any emergency management auxiliary policeman who has had conferred upon him the power of a peace officer, as provided in Section 33-15-39 and when in full and distinctive uniform or displaying a badge or other insignia of authority, may arrest without a warrant any person violating or attempting to violate in such officer's presence any order, rule, or regulation made pursuant to this article. This authority shall be limited to those rules and regulations which affect the public generally.

HISTORY: Codes, 1942, § 8610-21; Laws, 1952, ch. 312, § 21; Laws, 1980, ch. 491, § 20, eff from and after passage (approved May 9, 1980).

Cross References — Civil emergencies, see § 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

Procedure for making arrests, see §§ 99-3-1 et seq.

§ 33-15-43. Penalties.

Any person violating any provision of this article or any rule, order, or regulation made pursuant to this article shall, upon conviction thereof, be punishable by a fine not exceeding Five Hundred Dollars ($500.00) or imprisonment for not exceeding six (6) months or both.

HISTORY: Codes, 1942, § 8610-22; Laws, 1952, ch. 312, § 22, eff from and after passage (approved April 16, 1952).

Cross References — Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

§ 33-15-45. Local emergency management councils continued.

All local emergency management councils heretofore created under the provisions of former Sections 8610-8620, Mississippi Code of 1942, are hereby continued, subject to the provisions of this article.

HISTORY: Codes, 1942, § 8610-23; Laws, 1952, ch. 312, § 23; Laws, 1980, ch. 491, § 21, eff from and after passage (approved May 9, 1980).

Editor's Notes — Former §§ 8610 through 8620, Mississippi Code of 1942, are present §§ 33-15-1 through 33-15-47 and 45-17-1 through 45-17-11. For a complete listing of §§ 8610 through 8620 carried into the Code of 1972, see the Statutory Tables Volume.

§ 33-15-47. Liberality of construction.

This article shall be construed liberally in order to effectuate its purposes.

HISTORY: Codes, 1942, § 8610-25; Laws, 1952, ch. 312, § 25, eff from and after passage (approved April 16, 1952).

§ 33-15-49. Emergency use of state or local personnel and equipment authorized; limitation of liability.

In the event an impending enemy attack, an enemy attack, or a man-made, technological or natural disaster occurs within the state or within any portion of it and a proclamation is issued by the governing authorities of the county, the governing authorities of the municipality, the office of the Governor of the state or the President of the United States declaring such affected areas to be disaster areas, the governing authorities of any county or municipality adversely affected by such disaster may:

(a) Use county or municipally owned equipment and such public employees as necessary to venture onto private property to aid in removing debris and to prevent further damage to such property at the request of the property owners;

(b) Use county or municipally owned equipment and such public employees as necessary to venture onto private property to remove debris and to perform any other necessary and needed services to prevent the spread of disease or any other health hazard to the community at large.

If the governing authorities of such adversely affected counties or municipalities are unable to perform such necessary and needed functions with their own equipment and personnel, they may request aid from other counties and municipalities not adversely affected by such impending enemy attack, enemy attack, or man-made, technological or natural disaster, and capable and willing to furnish needed services.

Provided, however, if the Governor determines that the governing authorities of such adversely affected counties or municipalities still lack sufficient equipment and personnel under such circumstances to perform such functions, any state agency or instrumentality, when directed by the Governor, is authorized to enter upon publicly or privately owned land or water and to use state-owned equipment and state employees as necessary to clear or remove debris and wreckage. Whenever the Governor provides for clearance of debris or wreckage pursuant hereto, employees of the designated state agencies or instrumentalities are authorized to enter upon private or public land or water and perform any tasks necessary to the removal or clearance operation. Except in cases of willful misconduct, gross negligence or bad faith, any state employee or agent complying with and performing duties pursuant hereto shall not be liable for death or injury to persons or damage to property.

HISTORY: Laws, 1980, ch. 491, § 22; Laws, 1998, ch. 338, § 2, eff from and after July 1, 1998.

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Prisoners may not generally be worked on private property, except a municipality may provide prisoners for public service work for nonprofit charitable organizations to provide food to charities, and prisoners may be worked on private property during emergency situations pursuant to the Mississippi Emergency Management Law. Pickens, July 3, 1997, A.G. Op. #97-0365.

Once the debris and other health hazards that resulted from Hurricane Katrina have been removed or eliminated, the use of municipal employees and/or municipally owned equipment to clean up private property would be an unlawful donation and is prohibited. Lightsey, Dec. 15, 2006, A.G. Op. 06-0632.

§ 33-15-51. Grand Gulf Disaster Assistance Trust Fund.

The Grand Gulf Disaster Assistance Trust Fund is hereby created as a special fund in the State Treasury to be administered by the Mississippi Emergency Management Agency. Monies paid into the fund shall be derived from Sections 27-35-309(3)(b)(i) and (ii) and 27-35-309(3)(d). All monies deposited therein shall be available for expenditure, transfer and allocation by the Mississippi Emergency Management Agency for state and local preparedness activities directly related to the Grand Gulf Nuclear Generating Plant, with at least fifty percent (50%) of the monies in the fund earmarked for use in conducting such activities in the geographic area falling within a thirty-mile radius of the plant.

HISTORY: Laws, 1990, ch. 524, § 3; Laws, 1990, 1st Ex Sess, ch. 12, § 2; Laws, 1993, ch 486, § 1, eff from and after July 1, 1993.

Cross References — Taxation of nuclear generating plants and distribution of revenues, see § 27-35-309.

§ 33-15-53. State emergency coordination officers.

The head of each state department, agency or commission shall select from within such agency a person to be designated as the emergency coordination officer for the agency and an alternate. The emergency coordination officer is responsible for coordinating with the Mississippi Emergency Management Agency on emergency preparedness issues, preparing and maintaining emergency preparedness and postdisaster response and recovery plans for such agency, maintaining rosters of personnel to assist in disaster operations and coordinating appropriate training for agency personnel. These individuals shall be responsible for ensuring that each state facility, such as a prison, office building or university, has a disaster preparedness plan that is approved by the applicable local emergency management agency or the division. The head of each agency shall notify the Governor and the Mississippi Emergency Management Agency in writing of the person initially designated as the emergency coordination officer for such agency and his alternate and of any changes in persons so designated thereafter.

HISTORY: Laws, 1995, ch. 333, § 14, eff from and after July 1, 1995.

ARTICLE 2.

INDIVIDUAL ASSISTANCE AND EMERGENCY TEMPORARY HOUSING ACT.

Sec.

33-15-201. Short Title.
33-15-202. Legislative declaration of purpose.
33-15-203. Definitions.
33-15-205. Presidential declaration of emergency; power of Governor to accept assistance.
33-15-207. Filing request for federal assistance.
33-15-209. Administration of grant programs.
33-15-211. Amount of grants.
33-15-213. Limitations of time for requesting assistance.
33-15-215. Federal temporary housing authorized; powers of Governor.
33-15-217. State temporary housing authorized; powers of state and political subdivisions.
33-15-219. Description of temporary housing.
33-15-221. Conditions precedent for obtaining state temporary housing program assistance.
33-15-223. Period of eligibility for receiving temporary housing assistance.

§ 33-15-201. Short Title.

This article shall be known and may be cited as the Individual Assistance and Emergency Temporary Housing Assistance Act.

HISTORY: Laws, 2004, ch. 405, § 1, eff from and after July 1, 2004.

Editor's Notes — Laws of 2004, ch. 405, § 15 provides:
"SECTION 15. Sections 33-15-201 through 33-15-223 shall be codified as Article 2, Chapter 15, Title 33, Mississippi Code of 1972."

§ 33-15-202. Legislative declaration of purpose.

It is the intent of the Legislature and declared to be the policy of the state that funds to meet emergencies or major disasters shall always be made available.

HISTORY: Laws, 2004, ch. 405, § 2, eff from and after July 1, 2004.

§ 33-15-203. Definitions.

The following words wherever used in this article shall, unless a different meaning clearly appears from the context, have the following meanings:

(a) "Necessary expense" means the cost of an item or service essential to an individual, family or household to mitigate or overcome an adverse condition caused by an emergency or major disaster.

(b) "Serious need" means a requirement for an item or service essential to an individual, family or household to prevent or reduce hardship, injury or loss caused by an emergency or major disaster.

(c) "Family" means a social unit, comprised of husband and wife and dependents, if any, or a head of a household, as these terms are defined in the Internal Revenue Code of 1954.

(d) "Individual" means a person who is not a member of a family as defined in paragraph (c).

(e) "Household" means a dwelling containing a single family or single family and other relatives not otherwise considered family as defined in paragraph (c).

(f) "Assistance from other means" means aid, including monetary or in-kind contributions from other governmental programs, insurance, voluntary or charitable organizations or from any sources other than those of the individual, family or household.

(g) "The Act" means the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, as amended by PL 100-707 and PL 106-390).

(h) "Individuals and households program" means the federal assistance available to eligible individuals under a major disaster declaration by the president pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(i) "Other Needs Assistance" means that component of the IHP program that provides a grant for individuals that requires the state share twenty-five percent (25%) of the total cost according to Section 408 of the Stafford Act (42 USCS 5174).

(j) "Federal regulations" means those regulations published in the Federal Register relating to the specific subject.

(k) "Emergency" means any occasion or instance for which, in the determination of the Governor or President, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(*l*) "State of emergency" means that a state of emergency has been declared by the Governor pursuant to Section 33-15-11(b)(17) to exist as a result of a man-made, technological or natural disaster and the local government has exhausted local resources and requires state assistance.

(m) "Federal assistance" means aid to disaster victims or state and local governments by federal agencies under the provisions of the Act.

(n) "Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, volcanic eruption, landslide, snowstorm, drought, fire, explosions, acts of terrorism or other man-made, technological or natural disaster or catastrophe in the State of

Mississippi which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Federal Disaster Relief and Emergency Assistance Act and beyond emergency services of the state, local governments and disaster relief organizations in alleviating the damage, loss, hardship or suffering caused thereby.

(o) "Director" means the Director of Mississippi Emergency Management Agency, appointed pursuant to Section 33-15-7.

(p) "Governor's authorized representative" means the person appointed by the Governor to administer federal disaster assistance programs on behalf of the state and local governments and are responsible for the state compliance with the FEMA-State Agreement.

(q) "State coordinating officer" means the person appointed by the Governor to act in cooperation with the federal coordinating officer appointed under Section 303(c) of the Act.

(r) "Temporary housing program" means rental of existing housing, apartments or commercial lodging provided by assistance from state government either individually or jointly to individuals, families or households made homeless by emergency or major disaster.

(s) "Voluntary organization" means any chartered or otherwise duly recognized tax-exempt local, state or national organized group that has provided or may provide services to states, local governments or individuals in a major disaster or emergency.

HISTORY: Laws, 2004, ch. 405, § 3, eff from and after July 1, 2004.

Federal Aspects— Internal Revenue Code generally, see USCS, Title 26. Section 303(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, see 42 USCS § 5143.

§ 33-15-205. Presidential declaration of emergency; power of Governor to accept assistance.

Whenever the President of the United States, at the request of the Governor, has declared an emergency or a major disaster to exist in this state and the declaration includes Individual Assistance, the Governor is authorized:

(a) To accept a grant by the federal government, subject to such terms and conditions as may be imposed, including the required final audit by the State Auditor's Office, upon determination and with concurrence by the director that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals, families or households adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance.

(b) To enter into an agreement with the federal government, or any officer or agency thereof, pledging the state to participate in the funding of the Other Needs Assistance (ONA) program authorized in the Act, in an amount not to exceed twenty-five percent (25%) thereof, and if state funds are not otherwise available to the Governor, to accept an advance of the state share from the federal government to be repaid when the state is able to do so when appropriated for that purpose.

HISTORY: Laws, 2004, ch. 405, § 4, eff from and after July 1, 2004.

Federal Aspects— Other Needs Assistance program, see 42 USCS § 5174.

§ 33-15-207. Filing request for federal assistance.

In order to make federal Individual Assistance and Other Needs Assistance available to major disaster victims under this article, the Governor must request such assistance from the President of the United States. The Federal Emergency Management Agency must approve such a request and recommend the President of the United States make a major disaster declaration.

HISTORY: Laws, 2004, ch. 405, § 5, eff from and after July 1, 2004.

§ 33-15-209. Administration of grant programs.

(1) The director shall develop a plan for the administration and implementation of the Individuals and Households Program and Other Needs Assistance pursuant to subsections 408(e) and (f) of the Act to be included in the Mississippi Emergency Operations Plan (MEOP), and it shall include, but not be limited to:

(a) Individuals, families or households who incur a necessary expense or serious need in the major disaster area may be eligible for assistance under this article without regard to their residency in the major disaster area or within the state.

(b) Individuals, families or households otherwise eligible for assistance under this article must obtain flood insurance as required by flood insurance regulations.

(2) Assistance under this article may be made available to meet necessary expense or serious needs by providing essential items or services that cannot be provided from other sources and except those covered by insurance as provided in current federal regulations.

(3) Under this article grants will not be made available for any item or service in the following categories:

(a) Business losses, including farm businesses.

(b) Improvement or additions to real or personal property.

(c) Landscaping.

(d) Real or person property used exclusively for recreations.

(e) Financial obligations incurred prior to the disaster.

(f) Any necessary expense or serious need or portion thereof for which assistance is available from other means but is refused by the individual, family or household.

(g) Should a case arise where it is determined that an individual, family or household has an expense or need not specifically identified as eligible; the state will provide a factual summary and forward it to the regional director, FEMA, for determination prior to making a state commitment.

(4) The director shall also develop a plan for administration and implementation of the Mississippi Temporary Housing Program (THP) to be included in the MEOP, and it shall include, but not be limited to:

(a) Establishing emergency conditions that warrant program activation.

(b) Developing application procedures and applicant eligibility criteria.

(c) Verifying applicant certification process.

(d) Establishing grant award limits based on fair market rent rates as identified and published by the U.S. Department of Housing and Urban Development.

(e) Maintaining program progress and financial reporting and budget requirements.

HISTORY: Laws, 2004, ch. 405, § 6, eff from and after July 1, 2004.

Federal Aspects— Individuals and Households Program and Other Needs Assistance program, see 42 USCS § 5174.

§ 33-15-211. Amount of grants.

(1) In the case of a federally declared disaster, the state cost-share under this article shall be equal to twenty-five percent (25%) of the actual cost of implementing the Other Needs Assistance Program, and shall be made only on the condition that the federal government provides the remaining seventy-five percent (75%) of the ONA grant. In the event of a Governor's state of emergency declaration, the state grant under this article shall be equal to an amount established by the Director of the Mississippi Emergency Management Agency.

(2) An individual, family or household shall not receive a grant or grants under the provisions of this article aggregating more than the amount specified annually by the Federal Emergency Management Agency and published in the Federal Register with respect to any one (1) major disaster declared by the President. In the case of a federally declared disaster, such aggregate amount shall include both state and federal share of the grant. With respect to any one (1) disaster declared by the Governor's state of emergency, such amount of assistance shall not exceed an amount equal to one-half (½) of the amount of the Other Needs Assistance Program specified annually by the Federal Emergency Management Agency and published in the Federal Register and shall include the total amount of rental assistance provided an applicant under the Mississippi Temporary Housing Program.

HISTORY: Laws, 2004, ch. 405, § 7, eff from and after July 1, 2004.

§ 33-15-213. Limitations of time for requesting assistance.

(1) The time limitation for the Governor to request federal emergency or

major disaster assistance shall be in accordance with current federal regulations.

(2) The time limitation for disaster applicants to request assistance and file applications under current federal regulations is sixty (60) days from the date of declaration of disaster by the President. The time limitation for applicants to request state rental assistance under the State Temporary Housing Program is thirty (30) days following the declaration of an emergency by the Governor.

HISTORY: Laws, 2004, ch. 405, § 8, eff from and after July 1, 2004.

§ 33-15-215. Federal temporary housing authorized; powers of Governor.

Whenever disaster conditions arise that affect the lives and safety of a substantial number of residents of the State of Mississippi and the governing authority of the political subdivision wherein said disaster conditions exist makes a request to the Governor for federal major disaster assistance, and the Governor requests, and the President of the United States declares an emergency or a major disaster to exist in this state, the Governor is authorized:

(a) To arrange with any agency of the United States to provide for temporary housing units to be occupied by disaster victims and to make such units available to any political subdivision of the state.

(b) To assist any political subdivision of this state which is the locus of temporary housing units for disaster victims by coordinating with any agency of the United States for such temporary housing to locate and prepare such sites to receive and utilize temporary housing units.

(c) Under such regulations as he shall prescribe, to temporarily suspend or modify for not to exceed sixty (60) days any public health, safety, zoning, transportation (within or across the state) or any other requirement of law or regulation within this state when, by proclamation, he deems such suspension or modification essential for any agency of the United States to provide temporary housing for disaster victims.

HISTORY: Laws, 2004, ch. 405, § 9, eff from and after July 1, 2004.

§ 33-15-217. State temporary housing authorized; powers of state and political subdivisions.

State Temporary Housing Assistance under this article may be made available to those victims of an emergency or localized disaster who, as a result of a state of emergency declared by the Governor, require temporary housing assistance for reasons including, but not limited to, the following:

(a) Physical damage to the dwelling to the extent that it has been rendered uninhabitable for a period of no less than three (3) days.

(b) The dwelling has been determined uninhabitable as a result of an authorized governmental entity requiring evacuations of an area though the structure may be unharmed. This does not include subsequent condemnations for redevelopment of an area following a disaster.

(c) Impeded access to the dwelling that cannot be quickly alleviated by debris removal even though the structure may be unharmed.

(d) Extended interruption of essential utilities sufficient to constitute a health hazard.

(e) Eviction from a residence by the owner because of the owner's perennial need for housing as a direct result of the disaster.

(f) Eviction from residence by owner because of a financial hardship that is a direct result of the disaster.

(g) Other circumstances which cause temporary housing to be required and which are approved by the director.

HISTORY: Laws, 2004, ch. 405, § 10, eff from and after July 1, 2004.

Cross References — Conditions precedent for obtaining state temporary housing program assistance, see § 33-15-221.

Length of period of eligibility for receiving temporary housing assistance, see § 33-15-223.

§ 33-15-219. Description of temporary housing.

Temporary housing shall be limited to minimum accommodations necessary for adequate housing for periods longer than that provided through the operation and use of community emergency shelters. Temporary housing accommodations may include, but not be limited to:

(a) Unoccupied, available housing of the United States when made available by the appropriate federal agency.

(b) Mobile homes, travel trailers or other readily fabricated dwellings provided by the appropriate federal agency.

(c) Rental properties when deemed by the appropriate federal agency to be the most economical means available.

(d) Rental properties and apartments or commercial lodging obtained with state temporary housing program grant proceeds.

HISTORY: Laws, 2004, ch. 405, § 11, eff from and after July 1, 2004.

§ 33-15-221. Conditions precedent for obtaining state temporary housing program assistance.

When temporary housing assistance is provided based on the guidelines outlined in Section 33-15-217, the following conditions are imposed:

(a) An applicant is expected to expend the grant proceeds to secure adequate temporary housing for purposes stated in their application for assistance. Refusal by the applicant to abide by this provision shall result in his forfeiture of eligibility for additional temporary housing assistance.

(b) Temporary housing assistance proceeds shall not be provided for nor expended for providing minimal home repairs or replacing lost or damaged personal property.

(c) Temporary housing assistance shall not be made available to those individuals, families or households with insurance coverage which provides full cost of alternate living arrangements except when, as determined by the appropriate authority, adequate alternate housing is not readily available or the receipt of insurance benefits are uncertain or inadequate to meet temporary housing needs. Individuals, families or households who qualify for and accept state assistance under the exception shall repay or pledge to repay to the state government, from any insurance proceeds for temporary housing to which they are entitled, an amount equivalent to the fair market value of the housing provided by the state. Temporary housing assistance shall not be made available to any individual, family or household for use as a vacation or recreational residence.

HISTORY: Laws, 2004, ch. 405, § 12, eff from and after July 1, 2004.

§ 33-15-223. Period of eligibility for receiving temporary housing assistance.

(1) The period of eligibility for any individual, family or household applicant receiving assistance under the State Temporary Housing Program shall be from one (1) to three (3) months determined on the basis of need. Each temporary housing applicant shall endeavor to place himself in adequate alternate housing at the earliest possible time during the period assistance is being provided.

(2) Each occupant's eligibility for continued assistance shall be recertified every thirty (30) days. Thereafter, provided no adequate alternate housing exists, assistance shall be continued for another thirty-day period, not to exceed ninety (90) days. All rental assistance is based on the fair market value of rental rates in the applicant's particular area according to the rate schedule published by the U.S. Department of Housing and Urban Development.

HISTORY: Laws, 2004, ch. 405, § 13, eff from and after July 1, 2004.

ARTICLE 3.

INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT [REPEALED].

Sec.
33-15-101. Repealed.

§ 33-15-101. Repealed.

Repealed by Laws, 1995, ch. 333, § 16, eff from and after July 1, 1995.
§ 33-15-101. [Codes, 1942, § 8610-31; Laws, 1952, ch. 313]

Editor's Notes — Former § 33-15-101 authorized the Governor to enter into civil defense and disaster compacts.

ARTICLE 5.

DISASTER ASSISTANCE ACT OF 1993.

Sec.

33-15-301. Short title.
33-15-303. Policy and intent.
33-15-305. Definitions.
33-15-307. When provisions of article invoked; Disaster Assistance Trust Fund.
33-15-308. Requisition of additional funds for Disaster Assistance Trust Fund to provide for disaster assistance.
33-15-309. Director to administer; state agencies to comply; state held harmless in connection with certain project applications; director's annual report as to trust fund; presentment to Department of Finance for payments from trust fund.
33-15-311. Allocations from trust fund to state agencies; agencies receiving allocations to request escalations of budgets.
33-15-313. Project applications; requirements for allocation of trust fund monies.
33-15-315. Work performed by contract with state or local agency.
33-15-317. Advance on funds to initiate projects; disposition of certain federal funds; certain contributions reduced by amount of insurance settlements.

§ 33-15-301. Short title.

This article shall be known and may be cited as the Disaster Assistance Act of 1993.

HISTORY: Laws, 1993, ch. 412, § 1, eff from and after July 1, 1993.

Cross References — Use of Working Cash – Stabilization Reserve Fund to provide funds for disaster assistance under this section, see § 27-103-203.

Reimbursement of state agencies for expenses in carrying out disaster or emergency assignments, see § 33-15-29.

§ 33-15-303. Policy and intent.

It is the intent and declared to be the policy of the state that funds to meet emergencies or major disasters shall always be made available when needed.

HISTORY: Laws, 1993, ch. 412, § 2, eff from and after July 1, 1993.

Cross References — Use of Working Cash – Stabilization Reserve Fund to provide funds for disaster assistance under this section, see § 27-103-203.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations § 114.

§ 33-15-305. Definitions.

The following terms shall have the meanings ascribed in this section, unless the context requires otherwise:

(a) "Director" means the Director of the Mississippi Emergency Management Agency.

(b) "Disaster" means a fire, flood, storm, tornado, hurricane, earthquake or other similar public calamity affecting homeland security resulting directly from man-made, technological or natural causes.

(c) "Local agency" means any municipality, county or special district.

(d) "Local emergency" means the existence of conditions of disaster or extreme peril to the safety of persons and property within a county or municipality proclaimed by the local governing body in accordance with Section 33-15-17(d).

(e) "Governor's authorized representative" means the primary and alternate emergency management official designated by the Governor to administer federal assistance programs on behalf of the state and local governments and other grant or loan recipients and is responsible for the state compliance with the FEMA-State Agreement.

(f) "Project" means the repair or restoration, or both, other than normal maintenance, or the replacement of public real property of a local agency or a state agency, including, but not limited to, buildings, schools, levees, flood control works, channels, irrigation works, city streets, county roads, bridges and other public works, including those facilities used for recreation purposes, that are damaged or destroyed by a disaster.

(g) "Project application" means the written application made by a state or local agency to the director for federal and state financial assistance, which shall include all damage to public property that resulted from a disaster within the jurisdiction of the agency making application.

(h) "Project worksheet" means the appropriate federal form that must be used to prepare each eligible public assistance project identifying the scope of work and a quantitative estimate for the eligible work.

(i) "Regional response team" means the local government regional response teams, the state response team and the capitol complex response team.

(j) "State agency" means any agency, department, commission, board, institution or special district of the state.

(k) "State of emergency" means the existence of conditions of disaster or extreme peril to the safety of persons or property within the state declared by the Governor in accordance with Section 33-15-11(b)(16).

(*l*) "Trust fund" means the Disaster Assistance Trust Fund.

HISTORY: Laws, 1993, ch. 412, § 3; Laws, 2002, 3rd Ex Sess, ch. 3, § 17; Laws, 2004, ch. 490, § 1, eff from and after July 1, 2004.

Cross References — Use of Working Cash – Stabilization Reserve Fund to provide funds for disaster assistance under this section, see § 27-103-203.

§ 33-15-307. When provisions of article invoked; Disaster Assistance Trust Fund.

(1) The provisions of this article shall be invoked only pursuant to a state of emergency declared by the Governor or an emergency or major disaster declared by the President, or pursuant to an executive order of the Governor, or administrative order of the director, in order to provide state or local government resources and personnel in compliance with the provisions of the Emergency Management Assistance Compact, Section 45-18-1 et seq., or in nondeclared times for administrative and training costs associated with state disaster response and recovery programs. Each declaration shall cite the cause for the declaration and define the area eligible for assistance and the type of assistance to be provided.

(2) The Disaster Assistance Trust Fund is created as a special fund in the State Treasury into which shall be paid any funds appropriated or otherwise made available by the Legislature for disaster assistance, any funds transferred from the Working Cash-Stabilization Reserve Fund as provided under subsection (5) of this section, any income from investment of the funds in the trust fund, and federal reimbursement for administrative costs for management of the Individuals and Households Program (IHP), the Public Assistance Program, the Hazard Mitigation Program and Disaster Reservist Program.

(3) Income from investment of the funds in the trust fund, and all other funds deposited therein pursuant to law, shall be available for expenditure, transfer and allocation pursuant to this article.

(4) The Disaster Assistance Trust Fund shall be used only for the following purposes:

(a) The state's portion of the cost share for public assistance under a major disaster declaration.

(b) The state's cost share of the Individuals and Households Program (IHP) pursuant to Section 33-15-209(1) under a major disaster declared by the President.

(c) Administrative costs for managing the IHP.

(d) Administrative costs for managing the Public Assistance Program.

(e) The State Temporary Housing Program pursuant to Section 33-15-217 under a state of emergency declared by the Governor.

(f) Out-of-pocket expenses, including travel, per diem, overtime and other similar expenses, of state or local agencies when so tasked by the Governor or the director for emergency response under the provisions of Section 33-15-11(b)(7) and current executive orders. This includes actual emergency response and recovery activities, and applies to mobilization and deployment of personnel from state or local agencies to another state under the provisions of the Emergency Management Assistance Compact. At the discretion of the director, this may include reimbursement of costs to local governments for overtime and backfill of deployed personnel within the state under the provisions of Section 33-15-15(a) and to jurisdictions who are signatories of the Statewide Mutual Aid Compact (SMAC).

(g) Costs incurred as a result of state active duty for the Mississippi National Guard when so tasked by the Governor to provide support to other agencies and local governments in a major disaster or emergency situation, or when tasked by the Governor to provide support to another state under the provisions of the Emergency Management Assistance Compact.

(h) The state's portion of the cost share for hazard mitigation under a major disaster declaration.

(i) Administrative costs of the Hazard Mitigation Program.

(j) Costs incurred as a result of the implementation of the Disaster Reservist Program under a major disaster declaration.

(k) Administrative costs of the Disaster Reservist Program.

(*l*) Costs incurred as a result of the implementation of public assistance, and/or individual assistance, and/or Disaster Reservist Program, and/or hazard mitigation, and/or temporary housing under a Governor's state of emergency.

(m) The state's portion of the cost share for public assistance under a major disaster declaration for tornado or other storm damage to public facilities and infrastructure occurring on November 10, 2002, as provided in Sections 1 through 16 of Chapter 3, Third Extraordinary Session 2002.

(n) Actual costs, including personnel call-back wages, base and overtime wages, travel, per diem and other out-of-pocket expenses incurred by regional response teams as a result of being mobilized or deployed when so tasked by the Governor pursuant to Section 33-15-11(b)(7), or by the director for emergency response pursuant to Section 33-15-15(a).

(o) The state's portion of the cost share for public assistance under the Presidential Declaration of Major Disaster for the State of Mississippi (FEMA-1604-DR) dated August 29, 2005, for hurricane or other storm damage to public facilities and infrastructure as a result of Hurricane Katrina, as provided in Section 3 of Chapter 538, Laws of 2006.

(p) Costs incurred for alternative housing grants up to Two Hundred Fifty Thousand Dollars ($250,000.00) per county, per event, to be administered by the Mississippi Emergency Management Agency for materials only for repairs to communities that do not qualify for Federal Emergency Management Agency Individual Assistance Grants.

(q) Costs incurred by the Mississippi Emergency Management Agency, approved by the executive director, to assist municipalities and counties by allowing them to apply and receive funds for debris removal support, which funds shall be reimbursed to the Mississippi Emergency Management Agency at the date determined after the federal disaster declaration. The Mississippi Emergency Management Agency shall adopt rules and regulations necessary to administer this program.

(5) Whenever the director determines that funds are immediately needed in the Disaster Assistance Trust Fund to provide for disaster assistance under this article, he shall notify the Executive Director of the Department of Finance and Administration of his determination and shall requisition the amount of funds from the Working Cash-Stabilization Fund that are needed in

the trust fund, which shall be subject to the limitations set forth below in this subsection. At the same time he makes the requisition, the director shall notify the Lieutenant Governor, the Speaker of the House of Representatives and the respective Chairmen of the Senate Appropriations Committee, the Senate Finance Committee, the House Appropriations Committee and the House Ways and Means Committee of his determination of the need for the funds and the amount that he has requisitioned. Upon receipt of such a requisition from the director, the Executive Director of the Department of Finance and Administration shall ascertain if the amount requisitioned is available in the Working Cash-Stabilization Reserve Fund and is within the limitations set forth below in this subsection and, if it is, he shall transfer that amount from the Working Cash-Stabilization Reserve Fund to the trust fund. If the amount requisitioned is more than the amount available in the Working Cash-Stabilization Fund or above the limitations set forth below in this subsection, the executive director shall transfer the amount that is available within the limitations. The maximum amount that may be transferred from the Working Cash-Stabilization Reserve Fund to the trust fund for any disaster or disasters occurrence shall be One Million Dollars ($1,000,000.00) and the maximum amount that may be transferred during any fiscal year shall be Two Million Dollars ($2,000,000.00).

(6) Unexpended state funds in the Disaster Assistance Trust Fund at the end of a fiscal year shall not lapse into the State General Fund but shall remain in the trust fund for use under this article for as long as the funds are needed for the particular purpose for which they were appropriated, deposited or transferred into the trust fund. After any state funds in the trust fund are no longer needed for the particular purpose for which they were appropriated, deposited or transferred into the trust fund, the director may use those funds for any other purpose under this article for which they currently are needed and for which other funds are not available. If there is no current need for such funds for any purpose under this article, the funds and the income earned from the investment of the funds shall be transferred back to the particular fund or funds in the State Treasury from which they were appropriated or transferred into the trust fund, upon certification of the director to the Executive Director of the Department of Finance and Administration that the funds are not currently needed; however, if such funds are derived from the proceeds of general obligation bonds issued by the state under Section 3 of Chapter 538, Laws of 2006, such excess funds and the income earned from such funds shall be utilized to pay the debt service on such bonds.

HISTORY: Laws, 1993, ch. 412, § 4; Laws, 1994, ch. 433, § 1; Laws, 1998, ch. 338, § 3; Laws, 2000, ch. 413, § 5; Laws, 2001, ch. 341, § 1; Laws, 2002, 3rd Ex Sess, ch. 3, § 18; Laws, 2004, ch. 386, § 2; Laws, 2004, ch. 490, § 2; Laws, 2006, ch. 374, § 3; Laws, 2006, ch. 538, § 4, eff from and after passage (approved Apr. 14, 2006); Laws, 2020, ch. 469, § 1, eff from and after July 1, 2020.

Joint Legislative Committee Note — Section 2 of ch. 386 Laws of 2004, effective from and after passage (approved April 20, 2004), amended this section. Section 2 of ch. 490, Laws of 2004, effective from and after July 1, 2004 (approved May 4, 2004), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 490, Laws of 2004, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section effective on an earlier date.

Section 3 of ch. 374, Laws of 2006, effective from and after passage (approved March 13, 2006), amended this section. Section 4 of ch. 538, Laws of 2006, effective from and after passage (approved April 14, 2006), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the May 31, 2006, meeting of the Committee.

Editor's Notes — Laws of 2006, ch. 534, § 3, as amended by, Laws of 2006, 1st Ex Sess, ch. 8, § 18, effective September 13, 2006, provides:

"SECTION 3. There is hereby created in the State Treasury a special fund, separate and apart from any other special fund, to be designated as the Hurricane Disaster Reserve Fund. The State Fiscal Officer shall transfer from the State General Fund into the Hurricane Disaster Reserve Fund an amount equal to Two Hundred Sixty-eight Million Dollars ($268,000,000.00) during the period beginning July 1, 2006, and ending June 30, 2007.

"The funds transferred herein to the Hurricane Disaster Reserve Fund shall be utilized to defray the state's share of any nonfederal matching requirements for Federal Emergency Management Agency grants associated with Hurricane Katrina and other disasters. Unexpended funds remaining in the Hurricane Disaster Reserve Fund at the end of the fiscal year shall not lapse into the State General Fund but shall remain in the fund and any interest earned or investment earnings on amounts in the Hurricane Disaster Reserve Fund shall remain in the fund; however, any interest earned or investment earnings on amounts in the fund during fiscal years 2007 and 2008 shall be transferred by the State Treasurer to the Emergency Aid to Local Governments Fund created in Section 27-107-321.

"Funds deposited into the Hurricane Disaster Reserve Fund shall be used only for the purposes specified in this section, and as long as the provisions of this section remain in effect, no other expenditure, appropriation or transfer of funds in the Hurricane Disaster Reserve Fund shall be made except by act of the Legislature making specific reference to the Hurricane Disaster Reserve Fund as the source of those funds."

Amendment Notes — The 2020 amendment, in (4), deleted "Program" following "IHP" in (c), and added "(p) and (q); and in (5), rewrote the last sentence, which read: "The maximum amount that may be transferred from the Working Cash-Stabilization Reserve Fund to the trust fund for any one (1) disaster occurrence shall be Five Hundred Thousand Dollars ($500,000.00) and the maximum amount that may be transferred during any fiscal year shall be One Million Dollars ($1,000,000.00)."

Cross References — Transfer and use of funds from Working Cash-Stabilization Reserve Fund to Disaster Assistance Trust Fund to made in compliance with this section, see § 27-103-203.

Annual report to Governor and Legislature regarding operation of Disaster Assistance Trust Fund, see § 33-15-309.

Federal Aspects— Individuals and Households Program, see 42 USCS § 5174.

OPINIONS OF THE ATTORNEY GENERAL

Officers and members of the Mississippi National Guard placed on State Active Duty are not eligible to participate in the state health insurance plan under authority of this section or any other authority. Tucker, March 10, 1995, A.G. Op. #95-0124.

This section fails to address Workers' Compensation coverage and participation in the state health insurance plan for officers and members of the National Guard while on State Active Duty. Tucker, March 10, 1995, A.G. Op. #95-0124.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations § 114.

§ 33-15-308. Requisition of additional funds for Disaster Assistance Trust Fund to provide for disaster assistance.

It is the intention of the Legislature that whenever the Director of the Mississippi Emergency Management Agency determines that funds are immediately needed in the Disaster Assistance Trust Fund to provide for disaster assistance under this section, he shall notify the Executive Director of the Department of Finance and Administration of his determination and shall requisition the amount of funds from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) that are needed in the trust fund, which shall be subject to the limitations set forth below in this section. At the same time he makes the requisition, the director shall notify the Lieutenant Governor, the Speaker of the House of Representatives and the respective Chairmen of the Senate Appropriations Committee, the Senate Finance Committee, the House Appropriations Committee and the House Ways and Means Committee of his determination of the need for the funds and the amount that he has requisitioned. Upon receipt of such a requisition from the director, the Executive Director of the Department of Finance and Administration shall ascertain if the amount requisitioned is available in the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) and is within the limitations set forth below in this section and, if it is, he shall transfer that amount from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) to the trust fund. If the amount requisitioned is more than the amount available in the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) or above the limitations set forth below in this section, the executive director shall transfer the amount that is available within the limitations. The maximum amount that may be transferred from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) to the trust fund for any one (1) disaster occurrence shall be Five Hundred Thousand Dollars ($500,000.00) and the maximum amount that may be transferred during any fiscal year shall be One Million Dollars ($1,000,000.00).

It is the intention of the Legislature, that during the subsequent legislative session, consideration shall be given to provide an appropriation equal to the amount transferred from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) to the Disaster Assistance Trust Fund under the provisions of this section as repayment to the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund.

HISTORY: Laws, 2012, ch. 547, § 6, eff from and after July 1, 2012.

Cross References — Working Cash-Stabilization Reserve Fund, see § 27-103-203. Budget Contingency Fund, see § 27-103-301.

§ 33-15-309. Director to administer; state agencies to comply; state held harmless in connection with certain project applications; director's annual report as to trust fund; presentment to Department of Finance for payments from trust fund.

(1) The director shall administer this article and shall have the authority to adopt reasonable rules and regulations to effectuate the purposes of this article.

(2) A state agency, when requested by the director in accordance with Section 33-15-11(b)(7) or 33-15-11(c)(2) and current executive orders, shall render services and perform duties within its areas of responsibility necessary to carry out the purpose of this article.

(3) Each project application executed between a local agency and the director pursuant to subsection (4) of Section 33-15-313 shall contain a provision under which the local agency agrees to hold the state harmless from damages due to the work for which funds were allocated.

(4) Before the convening of the Legislature each year, the director shall submit a written report to the Governor and the Legislature relating to the operation of the trust fund.

(5) When certified by the director, requests for reimbursements, advances or final payments from local or state agencies shall be presented to the Department of Finance and Administration for payment out of the trust fund.

HISTORY: Laws, 1993, ch. 412, § 5, eff from and after July 1, 1993.

Cross References — Use of Working Cash – Stabilization Reserve Fund to provide funds for disaster assistance under this section, see § 27-103-203.

§ 33-15-311. Allocations from trust fund to state agencies; agencies receiving allocations to request escalations of budgets.

(1) The director shall make allocations from the trust fund in such amounts as he determines to be necessary to state agencies for out-of-pocket expenditures incurred for emergency response, preliminary damage assessments, estimates, reports and training of state agency personnel. Allocations

also may be made from the trust fund for the purpose of preparing project worksheets, estimates and reports as may be necessary to enable state or local agencies to obtain federal aid for disaster assistance purposes. The director may make allocations to any state agency or office from the trust fund or other funds available therefor in such amounts as are necessary to administer the provisions of this article.

(2) State agencies that are to receive allocations from the trust fund for carrying out the purposes of this article shall request the Department of Finance and Administration for escalations of their budgets as necessary for the expenditure of the allocated funds, in the same manner as the department escalates budgets for federal funds under Section 27-104-21(1).

HISTORY: Laws, 1993, ch. 412, § 6; Laws, 2004, ch. 490, § 3, eff from and after July 1, 2004.

Cross References — Use of Working Cash – Stabilization Reserve Fund to provide funds for disaster assistance under this section, see § 27-103-203.

§ 33-15-313. Project applications; requirements for allocation of trust fund monies.

(1) Subject to the conditions specified in this section, the director shall allocate funds from the trust fund to meet the cost of any one or more projects. The completion of all or part of a project before application for funds under this article shall not disqualify such project or any part thereof.

(2) To be eligible for state and/or federal funding, the governing body of the local agency must declare a local emergency and forward such declaration to the Governor.

(3) A state or local agency shall make application to the director for state and/or federal financial assistance within thirty (30) days after the date of the declaration of a major disaster or emergency declared by the President or a state of emergency declared by the Governor; however, the director may extend the time for such filing, but only under unusual circumstances. No financial aid shall be provided until an applicant has filed a Notice of Interest and a Request for Federal Assistance and a state and/or federal team has first investigated and reported upon the proposed work, has estimated the cost of the work, and has filed a project worksheet thereon with the Governor's authorized representative and a project application has been prepared. The estimate of cost of the work may include expenditures made by the state or local agency for such work before the making of such estimate. "Unusual circumstances," as used in this subsection, means unavoidable delays that result from recurrence of a disaster, prolonged severe weather or other conditions beyond the control of the applicant. Delays resulting from administrative procedures are not unusual circumstances that warrant extensions of time.

(4) No funds shall be allocated from the trust fund to a state or local agency until the agency has indicated in writing its acceptance of the project application and the cost-sharing related thereto in such form as the director

prescribes. The project application shall provide for the performance of the work by the state or local agency, shall provide for the methods of handling the funds allocated and the matching funds provided by the local agency, and shall contain such other provisions as are deemed necessary to ensure completion of the work included in the project application and the proper expenditures of funds as provided herein.

HISTORY: Laws, 1993, ch. 412, § 7; Laws, 2001, ch. 341, § 2; Laws, 2004, ch. 490, § 4; Laws, 2005, 5th Ex Sess, ch. 18, § 1, eff from and after Aug. 29, 2005.

Cross References — Use of Working Cash – Stabilization Reserve Fund to provide funds for disaster assistance under this section, see § 27-103-203.

Project applications executed between local agencies and director, pursuant to this section, to hold state harmless from damages arising from work for which funds were allocated, see § 33-15-309.

§ 33-15-315. Work performed by contract with state or local agency.

Work performed by contract with a state or local agency shall be subject to the provisions of Title 31, Chapter 5, and Title 31, Chapter 7, Mississippi Code of 1972 Neither the state or any officer or employee thereof shall have any responsibility in connection with any work performed by a local agency.

HISTORY: Laws, 1993, ch. 412, § 8, eff from and after July 1, 1993.

Cross References — Use of Working Cash – Stabilization Reserve Fund to provide funds for disaster assistance under this section, see § 27-103-203.

§ 33-15-317. Advance on funds to initiate projects; disposition of certain federal funds; certain contributions reduced by amount of insurance settlements.

(1) Under procedures prescribed by the director, a state or local agency may receive an advance of funds to initiate a project. Such advances shall be limited to not more than seventy-five percent (75%) of the estimated federal share of the project under the President's state of emergency, or fifty percent (50%) of the estimated share of the project under the Governor's state of emergency.

(2) Disaster assistance funds provided from federal sources under the provisions of Public Law 93-288 as amended by Public Law 100-707 and Public Law 106-390 shall be deposited in the trust fund, and the director shall make advances or reimbursement therefrom for expenditures for eligible work or for payment for performance.

(3) State and federal contributions for the repair and restoration of facilities shall be reduced by an amount equal to the insurance settlement received or an amount equal to the amount the local agency would have recovered from an insurance settlement if necessary, adequate and reasonably available insurance had been maintained.

HISTORY: Laws, 1993, ch. 412, § 9; Laws, 2001, ch. 341, § 3; Laws, 2004, ch. 490, § 5, eff from and after July 1, 2004.

Cross References — Use of Working Cash – Stabilization Reserve Fund to provide funds for disaster assistance under this section, see § 27-103-203.

Federal Aspects— PL 93-288 and federal disaster relief provisions generally, see 42 USCS §§ 5121 et seq.

ARTICLE 7.

OFFICE OF DISASTER ASSISTANCE COORDINATION.

Sec.
33-15-401. Legislative findings and declarations.
33-15-403. Office of Disaster Assistance Coordination established; duties and responsibilities.

§ 33-15-401. Legislative findings and declarations.

The Legislature finds and declares the following: When a major natural disaster such as Hurricane Katrina occurs in Mississippi, there are various types of assistance that are available to individuals and public entities through the federal and state governments to help them recover from the disaster. The majority of that assistance comes from the federal government, and most of the federal assistance is provided through the Federal Emergency Management Agency (FEMA). At the state level, most of the assistance is provided through the Mississippi Emergency Management Agency (MEMA). However, there are also programs in other federal and state agencies that provide assistance and benefits to disaster victims, as well as disaster assistance programs run by public and private entities and disaster-related in-kind donations made by private entities and individuals. Because these other disaster assistance programs and in-kind donations are spread out among a number of agencies and entities, disaster victims sometimes are not aware of the existence of these programs and in-kind donations other than those provided through FEMA and MEMA. After a disaster has occurred, it would be very beneficial for the victims of the disaster to have a single entity in the state, one point of contact, where individuals and public entities would be able to obtain information about those other disaster assistance programs and disaster-related in-kind donations, obtain all of the forms and materials necessary in order to receive the benefits of those programs and in-kind donations, and receive assistance in completing and filing the applications for those programs and in-kind donations.

HISTORY: Laws, 2005, 5th Ex Sess, ch. 9, § 1, eff from and after passage (approved Oct. 6, 2005).

§ 33-15-403. Office of Disaster Assistance Coordination established; duties and responsibilities.

There is established within the Office of the Governor a separate and distinct office to be known as the Office of Disaster Assistance Coordination. The office shall be the primary entity responsible for coordinating information regarding disaster assistance provided by federal agencies other than the Federal Emergency Management Agency (FEMA), by state agencies other than the Mississippi Emergency Management Agency (MEMA), and by other public and private entities that provide various types of assistance and benefits to victims of major natural disasters. The duties and responsibilities of the office shall be as follows:

(a) To serve as a single point of contact where individuals and public entities that are victims of major disasters may obtain information about all federal and state programs that provide assistance and benefits to disaster victims other than those provided by FEMA or MEMA, as well as information about the availability of disaster-related in-kind donations by private entities and individuals;

(b) To provide victims of major disasters with all of the forms and materials necessary in order to receive the benefits of those disaster assistance programs and disaster-related in-kind donations, and provide them with assistance in completing and filing the applications for those programs and in-kind donations;

(c) To coordinate and cooperate with FEMA, MEMA, other federal and state agencies and other public and private entities in providing and sharing information, forms and materials related to disaster assistance programs and disaster-related in-kind donations;

(d) To work with MEMA in coordinating information, revenues, programs and assistance made available in Mississippi by FEMA, whether directly through FEMA or through MEMA; and

(e) To perform such other duties relating to disaster assistance information as may be prescribed by the Governor.

HISTORY: Laws, 2005, 5th Ex Sess, ch. 9, § 2, eff from and after passage (approved Oct. 6, 2005).

ARTICLE 9.

MISSISSIPPI COUNTY AND MUNICIPALITY EMERGENCY RELIEF PROGRAM.

Sec.
33-15-501. Mississippi County and Municipality Emergency Relief Program established.
33-15-503. Definitions.
33-15-505. Mississippi Emergency Management Agency duties.
33-15-507. County or municipality eligibility.
33-15-509. County or municipality to have set aside pro rata share of monies in funds for reimbursement of qualified expenditures according to county or municipality population.
33-15-511. Deposit of funds into and disbursement of funds from COVID-19 Fund; audit of use of funds.

Sec.
33-15-513. Report on utilization of program.

§ 33-15-501. Mississippi County and Municipality Emergency Relief Program established.

There is established the Mississippi County and Municipality Emergency Relief Program, which shall be administered by the Mississippi Emergency Management Agency for the purpose of reimbursing counties and municipalities for eligible expenditures incurred in response to the COVID-19 pandemic.

HISTORY: Laws, 2020, 486, § 1, eff from and after passage (became law without the Governor's signature on July 9, 2020).

Editor's Note — Laws of 2020, ch. 486, § 8, effective July 9, 2020, provides:
"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 33-15-503. Definitions

For purposes of this article, the following words shall have the meanings ascribed herein unless the context otherwise requires:

(a) "Program" means the Mississippi County and Municipality Emergency Relief Program established in this article.

(b) "Agency" means the Mississippi Emergency Management Agency.

(c) "County" means any county within the state.

(d) "Municipality" means any municipality within the state.

(e) "COVID-19" means the Coronavirus Disease 2019.

(f) "CARES Act" means the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act.

(g) "Coronavirus Relief Fund" means the fund created by the CARES Act.

(h) "Eligible expenditure" means a cost incurred that is reimbursable from funds received from the Coronavirus Relief Fund under the guidance and guidelines of the United States Department of the Treasury, including, but not limited to:

(i) Medical expenses such as:

1. COVID-19-related expenses of public hospitals, clinics, and similar facilities.

2. Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.

3. Costs of providing COVID-19 testing, including serological testing.

4. Emergency medical response expenses, including emergency medical transportation, related to COVID-19.

(ii) Public health expenses such as:

1. Expenses for communication and enforcement by territorial, local, and tribal governments of public health orders related to COVID-19.

2. Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.

3. Expenses for disinfection of public areas and other facilities, e.g., nursing homes, in response to the COVID-19 public health emergency.

4. Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.

5. Expenses for public safety measures undertaken in response to COVID-19.

6. Expenses for quarantining individuals.

(iii) Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

(iv) Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:

1. Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.

2. Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.

3. Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.

4. COVID-19-related expenses of maintaining state prisons and county jails, including as it relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.

5. Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.

(v) Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:

1. Expenditures related to a state, territorial, local, or tribal government payroll support program.

2. Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.

(vi) Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Coronavirus Relief Fund's eligibility criteria.

"Eligible expenditure" does not include expenses for the state share of Medicaid, damages covered by insurance, payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency, expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by states to state unemployment funds, reimbursement to donors for donated items or services, workforce bonuses other than hazard pay or overtime, severance pay, legal settlements or any other expenditure determined to be ineligible by the agency.

HISTORY: Laws, 2020, 486, § 2, eff from and after passage (became law without the Governor's signature on July 9, 2020).

Editor's Note — Laws of 2020, ch. 486, § 8, effective July 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 33-15-505. Mississippi Emergency Management Agency duties.

(1) The agency shall:

(a) Promulgate regulations and develop procedures to govern the administration of this program, including a reimbursement process with a written form for each county or municipality to submit eligible expenditures to the agency and receive reimbursement from the agency;

(b) Inform each county and municipality of its portion of the funds set aside under Section 33-15-509;

(c) Inform each county and municipality of the requirements for reimbursement under the program, including the definition of an eligible expenditure under Section 33-15-503(h);

(d) Begin making initial disbursements to the counties and municipalities no later than August 15, 2020, for applicable, submitted eligible expenditures; and

(e) Continue to accept and reimburse rolling applications after August 15, 2020.

(2) The agency may retain up to Five Hundred Thousand Dollars ($500,000.00) of funds available under this article to administer this program.

HISTORY: Laws, 2020, 486, § 3, eff from and after passage (became law without the Governor's signature on July 9, 2020).

Editor's Note — Laws of 2020, ch. 486, § 8, effective July 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 33-15-507. County or municipality eligibility.

To be eligible under this grant program, a county or municipality shall submit:

(a) A Request for Public Assistance (RPA) to the agency, detailing each eligible expenditure;

(b) The original, itemized receipts and/or invoices of purchases and services paid by the county or municipality or the substantiated equivalent thereof as determined by the agency;

(c) Documentation of any funds received from any source to reimburse COVID-19-related expenses; and

(d) A specific job description of and rationale for any work performed by an employee who received hazard pay.

HISTORY: Laws, 2020, 486, § 4, eff from and after passage (became law without the Governor's signature on July 9, 2020).

Editor's Note — Laws of 2020, ch. 486, § 8, effective July 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 33-15-509. County or municipality to have set aside pro rata share of monies in funds for reimbursement of qualified expenditures according to county or municipality population.

Subject to appropriations by the Legislature each county or municipality shall have set aside a pro rata share of the monies in the funds for reimbursement of qualified expenditures according to the population of the county or municipality as listed in the 2010 U.S. Census.

HISTORY: Laws, 2020, 486, § 5, eff from and after passage (became law without the Governor's signature on July 9, 2020).

Editor's Note — Laws of 2020, ch. 486, § 8, effective July 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 33-15-511. Deposit of funds into and disbursement of funds from COVID-19 Fund; audit of use of funds.

(1) Funds appropriated for purposes of this article shall be deposited into

COVID-19 Fund (Fund Number 6820174100) and the agency shall create separate internal order numbers for county emergency relief assistance funds, from which the agency shall disburse the funds to counties as authorized by this article as well as the municipality emergency relief assistance funds, from which the agency shall disburse the funds to municipalities authorized by this article.

(2) All monies shall be disbursed from the COVID-19 Fund described in subsection (1) of this section in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act.

(3) The use of funds allocated under this program shall be subject to audit by the United States Department of the Treasury's Office of Inspector General and the Mississippi Office of the State Auditor. Each county or municipality, or other entity or person receiving funds under this program, found to be fully or partially noncompliant with the requirements in this article, shall return to the state all or a portion of the funds received.

HISTORY: Laws, 2020, 486, § 6, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2020, ch. 502, § 3, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Joint Legislative Committee Note — Section 6 of Chapter 486, Laws of 2020, effective from and after passage (became law without the Governor's signature on July 9, 2020), added this section. Section 3 of Chapter 502, Laws of 2020, effective from and after passage (became law without the Governor's signature on October 9, 2020), amended this section. As set out above, this section reflects the language of Section 3 of Chapter 502, Laws of 2020, which contains language that specifically provides that it supersedes § 33-15-511 as added by Chapter 486.

Editor's Note — Laws of 2020, ch. 486, § 8, effective July 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

Amendment Note — The 2020 amendment, effective October 9, 2020, in (2), deleted the former last sentence, which read: "If on November 1, 2020, there are unobligated monies in the COVID-19 Fund described in subsection (1) of this section, including any undisbursed portion of a county's or municipality's pro-rata share, the Governor shall have the discretion to transfer monies to another state agency to be used for eligible expenditures pursuant to the CARES Act."

§ 33-15-513. Report on utilization of program.

The agency shall report on the utilization of the program to the Chair of the County Affairs and Municipalities Committees of the Senate and the House of Representatives, the Lieutenant Governor, the Speaker of the House and the Governor by September 1, 2020. At a minimum, the report shall contain:

(a) The name of each participating county and municipality;

(b) The total amount of reimbursement requested by each county and municipality; and

(c) The total amount of reimbursement received by each county and municipality.

HISTORY: Laws, 2020, 486, § 7, eff from and after passage (became law without the Governor's signature on July 9, 2020).

Editor's Note — Laws of 2020, ch. 486, § 8, effective July 9, 2020, provides:
"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

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